



FINDING FARMLAND

A FARMER'S GUIDE TO WORKING WITH LAND TRUSTS



FINDING FARMLAND: A FARMER'S GUIDE TO WORKING WITH LAND TRUSTS

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PREFACE

Dear Reader,

As a farmer, you know that land is essential to starting a farm business. It provides the soil, water, and open space that you need. The location of the land determines the market opportunities, climate, and social networks that you operate in. Beyond being a home for your business, your land is likely where you will make your home as well.

Finding and securing land to farm is one of the biggest challenges that beginning farmers and ranchers face in starting a career in agriculture.¹ Farmland prices are at a record high across the country and land has become increasingly unaffordable for farmers.² The land surrounding our nation's cities, where market opportunities are greatest for beginning farmers, is often the most difficult to access. Thankfully, there are organizations around the country that can help you.

Land trusts have been protecting farmland from development for decades. A few visionary groups have also been working to ensure that this land stays in the hands of farmers. There are many more that have the capacity to be powerful partners. This guide was written to arm you with the information you need to find a land trust and convince them, if they need convincing, to help you access farmland.

Since I joined the National Young Farmers Coalition team, I have talked to both farmers and land trusts across the country about the challenges associated with the rising cost of land. Where I grew up, on a small farm outside of Saratoga Springs, New York, I have observed this trend first hand. Many farms around my family's land have been sold to developers or incorporated into larger farms when neither the retiring farmer nor the next generation could afford to transition the property.

Encouragingly, I have also seen an increasing number of farms protected with conservation easements—ensuring they will never be developed and allowing them to remain in agricultural use. I have talked with retiring farmers who are satisfied knowing the acres they labored on for so many years will never be covered with concrete. I have also met young farmers who were given the opportunity to purchase land by partnering with a land trust.

Working with a land trust might not be the most obvious option where you are, but I encourage you to seek one out, whether it is a local group or a national organization, and bring your challenge to them. Chances are, your missions overlap. With the right partnership, land trusts can help you secure farmland—not only for yourself, but for generations to come.

Sincerely,



Holly Rippon-Butler
Land Access Campaign Manager
National Young Farmers Coalition

1. National Young Farmers Coalition, "Building a Future with Farmers: Challenges Faced by Young, American Farmers and a National Strategy to Help them Succeed," November 2011.

2. Economic Research Service, "Trends in U.S. Farmland Values and Ownership," Economic Bulletin Number 92, February 2012.

INTRODUCTION

Over the past fifty years, land trusts have helped protect millions of acres of farmland from development.³ The National Young Farmers Coalition believes that these groups now have a critical role to play in helping the next generation of farmers access land.

In the fall of 2013, we published *Farmland Conservation 2.0: How Land Trusts Can Protect America's Working Farms*. In that report, we called on land trusts to increase their efforts to ensure that America's farmland stays in active agricultural production and in the hands of farmers.

We believe that farmers must be a part of this conversation as well. This guidebook provides you, the farmer, with practical tools and resources for partnering with a land trust to access land.

It is important to keep in mind that working with a land trust may not be the best option for you, and that land trusts vary in mission and capacity across the country. That said, we wrote this guidebook to demonstrate the possibilities and provide a starting point for potential partnership.

Of course, this should not be considered legal advice and you should talk with land trust staff, a lawyer, and others before making any final decisions. If you do decide that partnering with a land trust to access land is the right option for you, we hope we have provided resources that will guide you towards a successful relationship!

3. "Protecting Farmland," American Farmland Trust website, www.farmland.org/programs/protection.

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UNDERSTANDING THE BASICS

WHAT IS A LAND TRUST AND HOW
CAN IT HELP YOU?



WHAT IS A LAND TRUST?

Land trusts are non-profit 501(c)(3) organizations, often started by community members to protect specific resources, such as wildlife habitat, farmland, water quality, viewsheds, or habitat corridors, that are at risk from development or damage. They range in size and capacity from all-volunteer, local groups to national organizations with offices in multiple states.

Land trusts protect resources by purchasing property outright or by holding a conservation easement on it. Conservation easements, explained in detail later, are binding agreements in which the owner sells or donates a portion of their property rights, such as the right to develop on the land. For the farmer, transferring certain rights can provide capital for improvements or help lower the purchase price of the land and reduce the property owner's tax burden. This can help a new farmer to purchase the property or assist multiple generations in farm transfer.

Land trusts are required by the Internal Revenue Service, which grants them their non-profit status, to ensure the terms of the easement are upheld in perpetuity. This means regularly monitoring the property to ensure no violations of the terms are taking place. If a land trust ceases to exist, it must transfer its easements to another qualified organization or government agency.

An individual can sell or donate a conservation easement to a local land trust, national conservation organization, county or state open space program, purchase of development rights (PDR) program (such as the federal program), or state wildlife or natural resources agency.⁴ Transactions can involve a single organization or occur through partnerships between different organizations and agencies. Although this guidebook is geared towards working with local land trusts, many land trusts rely on municipal funding to purchase conservation easements, which means that you could be partnering with both the land trust and the county, state, or federal program representatives.

Land trusts can help you access affordable farmland by purchasing the easement to reduce the cost of the property; buying and reselling farmland at its agricultural value; and purchasing farmland that they then lease. There are many other variations of how you can partner with a land trust, discussed in detail later.

TYPES OF LAND TRUSTS

Conservation land trusts purchase easements in order to protect natural habitat, land for recreation, open space (including farmland and forestland), and historically important areas. Conservation land trusts may focus specifically on a certain resource, geographical area, or exist solely to carry out a single project. Since farmland is considered a conservation value by the I.R.S., all conservation land trusts have the ability to take on agriculture-related projects, although not all may include this work in their mission.

Agricultural land trusts have a particular focus on protecting our nation's working landscape. These land trusts work with farmers and ranchers to keep farmland free from development and available for agricultural use. Some agricultural land trusts go above and beyond the function of holding property or easements—providing workshops, holding events, and helping connect farmers with available land.

Community land trusts were first developed to address affordable housing issues but have been adopted to tackle the issue of affordable farmland as well.⁵ Community land trusts own the land and lease it to farmers with a 99-year renewable lease while the farmer owns the infrastructure and improvements. This allows the farmer to build equity while enjoying secure land access. These arrangements typically utilize formulas to determine the resale value of the property improvements in a way that compensates the seller while keeping the farm affordable for future generations.⁶

Water trusts are a specific type of conservation trust that exist primarily in the Western United States. Water trusts work with farmers and ranchers along with municipalities and other partners to buy or lease water rights with the goal of increasing stream flow and protecting wildlife habitat, especially for fish. In addition, they may help invest in on-farm infrastructure that makes water use more efficient. Working with a water trust may provide a revenue source to help finance land purchase, business operation, or land transfer. Like any land trust, the water trust may have priority watersheds and streams where it focuses its work. Trout Unlimited or the National Fish and Wildlife Foundation may be potential partners in your area.

4. Jeff Jones, William Wombacher, Lynne Sherrod, Heather McMillian, "Common Questions on Conservation Easements," Center for Collaborative Conservation, Colorado State University, 2009.
5. "Types of Land Trusts," Land Trust Alliance, <http://www.landtrustalliance.org/land-trusts-types-of-land-trusts>.
6. University of Vermont, "Land Access and Tenure Toolshed: Alternative Tenure Options," http://www.uvm.edu/newfarmer/?Page=land/alternative_tenure.html&SM=land/sub-menu.html.

CONTEXT AND HISTORY OF LAND TRUSTS

Land conservation for the public benefit began over 150 years ago with the creation of village improvement societies in Massachusetts. These societies acquired land to preserve it for public use.⁷ In 1872, land conservation on a national scale began with the creation of the National Parks Service and Yellowstone National Park.⁸

The Nature Conservancy was formed in 1951 and acquired its first property in 1955, marking the beginning of the modern land conservation movement.⁹ Since then, the number of land trusts in the United States has risen to roughly 1,700 and it is estimated that over 40 million acres of land have been protected.^{10,11} The majority of land trusts are located in the Northeast and concentrated in areas where land is most at risk of being developed.

The Marin Agricultural Land Trust, formed in 1980 to help protect family farms, was the first land trust in the nation focused solely on farmland.¹² In that same year, the American Farmland Trust was created, helping to bring national attention to the urgent need for agricultural land conservation.¹³

CONSERVATION EASEMENTS ON FARMS

Conservation easements protect land by limiting how it can be used. Typically, landowners have certain property rights, including the right to build homes and structures and the right to subdivide or 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 sell particular sticks from, if a market exists. Land trusts purchase specific rights from landowners—one or two ‘sticks from the bundle’—which effectively extinguishes these property rights (land trusts do not have use of the rights). This sale and agreement is called a conservation easement.

Selling property rights to a land trust can help you generate cash flow to purchase land, make infrastructure improvements, or buy equipment. Purchasing a farm that is already conserved can help you find good quality land at an affordable price.

On a farm property, the easement is a compromise between you, the land trust, and potential funders to make sure that the agricultural value of the land is preserved while still allowing you (and future farmers) to generate an income off of the property. A conservation easement typically entails agreeing, in perpetuity, not to subdivide the property for residential or commercial development, although some agricultural easements allow for farm properties to be divided into two smaller farms. 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.

To have an agricultural conservation easement put on it, a farm typically must be in active use. When that farm is sold, however, a traditional agricultural conservation easement does not specify that it must be sold to a farmer or kept as a farm. This means that in some regions, such as the Hudson Valley, Sonoma County, and areas around cities with high development pressure, conserved farms are purchased as rural estates. This trend drives the real estate values up and makes the properties unaffordable for farmers.

7. “What is a Land Trust,” Land Trust Alliance Fact Sheet, 2008.

8. Barry Mackintosh, “The National Park Service: A Brief History,” 1999, www.cr.nps.gov/history/hisnps/npshistory/npshisto.htm.

9. “Our History,” Nature Conservancy Website, www.nature.org/about-us/vision-mission/history.

10. “Land Trusts,” Land Trust Alliance Website, www.landtrustalliance.org/land-trusts, accessed July 2014.

11. National Conservation Easement Database website, www.conservationeasement.us.

12. “Founding Story,” Marin Agricultural Land Trust Website, www.malt.org/founding-story.

13. “Mission and History,” American Farmland Trust, www.farmland.org/about/mission/default.asp.

Some land trusts are using innovative easements to further protect farmland by stipulating that it must be kept in agricultural use or sold to a working farmer. In this scenario, if the property is not sold to a qualified farmer, the land trust has the option to step in and purchase it at agricultural value. These easements restrict more property rights, therefore providing greater initial compensation to landowners and helping to ensure that farmland remains accessible to farmers. The mechanism described is often referred to as an Option to Purchase at Agricultural Value (OPAV).

Landowners who sell easements receive a cash payment in exchange. This can help with estate planning, investing in farm infrastructure, reducing debt or purchasing land. Donating a conservation easement may also provide the landowner with tax deduction benefits. The value of the easement is the difference between the property's original value and its value without the property right(s) that has been extinguished. This amount ranges substantially—from a small percentage to more than half of the property value. The value is based on a number of factors, including geography, level of development threat, property size, and local zoning ordinances. In a market with high development pressure, such as Long Island, selling the development rights to the land may be worth a significant amount of the property's overall value.



Lindsey Lusher Shute

Land trust staff and conservation professionals from around the country gathered to share knowledge and best practices at Equity Trust and NYFC's first-annual land access innovations training in September 2014.

BENEFITS OF CONSERVING FARMLAND

Tax benefits The landowner may experience tax benefits from selling a conservation easement, including income, estate, and property taxes.

Business support Cash from selling the easement may help with business development, land transition, and equipment purchase for the landowner.

Ownership The land stays in private ownership while being permanently protected from development.

Agricultural legacy The landowner and community are reassured that the land will stay available for agricultural use.

Community benefits Scenic views are kept open and surrounding land may increase in value.

BENEFITS OF PURCHASING CONSERVED FARMLAND

Purchase price A conservation easement may help reduce the purchase price of the land.

Soils Land protected by agricultural conservation easements tends to have high quality soils.

ELEMENTS OF AN EASEMENT

When partnering with a land trust, you should expect that some activities will be restricted on the property—either because you sold the rights as part of the easement, or because the land trust has placed constraints on a property they own that you are leasing. Easement restrictions are based on the land trust’s best practice guidelines and any requirements of the funding that the land trust is working under. As the landowner, you will typically be able to negotiate some terms of the easement with the land trust, however, and there are a number of rights that you will retain.

Common restrictions

- Building except in specified building areas
- Draining or filling of wetlands
- Surface mining
- Dumping trash or hazardous waste
- Advertising billboards
- Further division of the property (except under guidelines agreed to by the landowner and the land trust)

Common rights¹⁴

- Use of the property for all purposes other than those restricted by the easement
- Ability to sell, give or otherwise convey the property
- The right to replace or add on to the existing buildings
- The right to construct specified structures in the determined building zones
- The right to harvest timber under an approved forest management plan

AFFORDABILITY INNOVATIONS IN AGRICULTURAL EASEMENTS

Below are some examples of the technical tools that innovative land trusts are using to lower the purchase price of conserved properties and ensure that farms stay affordable to *farmers*.

Affirmative Language

A typical conservation easement is restrictive—it takes away property rights. An easement with affirmative farming language *adds* on requirements in addition to extinguishing certain rights. Affirmative language can be used to require that the conserved property always be in **active** agricultural use or farmed organically, among other things. It is the responsibility of the organization that holds the easement to enforce this measure. The Massachusetts Agricultural Preservation Restriction (APR) Program incorporates this language into all of its easements.

Option to Purchase at Agricultural Value (OPAV)

The Vermont Land Trust uses OPAV language in its agricultural easements. This language requires that when the farm goes up for sale, if it is not being sold to a family member or qualified farmer (often defined based on the percentage of income earned from farming), the land trust can step in, buy the property, and resell it to a farmer (or assign the sale of the property directly to the farmer).

The sale of the land is at its **agricultural value**. This refers to the price that a farmer would pay for the land to use it for agriculture, rather than the “highest and best use price,” which is often based on development potential. Since the agricultural value of a property is often far lower than market value, an OPAV makes the land more affordable to farmers.

These “working farm easements” cost more than traditional easements initially, and therefore provide more cash value to the landowner—as much as sixty to seventy percent of a property’s fair market value.¹⁵ OPAVs have been shown to deter non-farmer buyers and keep conserved land in agriculture, although not necessarily affordable to beginning farmers.¹⁶

Preemptive Purchase Rights

This term refers to a similar mechanism as OPAV. Easements in New York State use preemptive purchase rights instead of OPAV due to state law requirements.

14. Landowner Guide to Conservation Easements, Leelanau Conservancy, <http://leelanauconservancy.org/wp-content/uploads/2012/01/2013-CE-Guide.pdf>.

15. Kendra Johnson, “Conserving Farmland in California,” Sustainable Development Law & Policy, Volume 9, Issue 1, Article 16, Fall 2008.

16. Bob Wagner, Kathy Ruhf, et al., “Does the Option at Agricultural Value Protect Farmland for Beginning Farmers?: A Policy Analysis,” Land for Good, 2013.

COMPARING CONSERVATION EASEMENT TOOLS AND PRICE

	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		

FARMLAND CONSERVATION TOOLBOX

Land trusts frequently get calls from people asking, “what do you do and how can you help me?” Make a good impression by understanding the possibilities before you reach out!

Here is a short list of some of the ways land trusts work with farmers, including example partnerships. (Keep in mind that not all land trusts provide all of these services.)

Reducing the cost of ownership through easement purchase

Purchase of conservation easements

This is the primary activity of most land trusts (although some only accept donated easements). The money from the easement sale can function as a down payment, helping to reduce the purchase cost of the land or can help provide income after the fact. Land trusts typically rely on public or donor funding to purchase easements.

Examples

A farmer purchases a property that has had a conservation easement placed on it in the past. They must comply with the terms of the easement, but may be able to purchase the farm at a reduced price because some of the rights have been sold already.

A farmer purchases a property and subsequently sells the conservation easement to the land trust in exchange for cash.

A farmer purchases a property at the same time as a land trust purchases the conservation easement to lower the purchase price or provide a down payment to the seller; the farmer then owns the property. A variation on this involves a generous landowner who is willing to donate the conservation easement to the land trust at the time of sale to the farmer in order to preserve the agricultural legacy of the land. See the side box on how to talk to landowners about conservation easements.

A farmer owns a property and donates the conservation easement to the land trust. The farmer may receive certain tax benefits if the easement meets all the I.R.S. standards of “conservation purpose.” The enhanced conservation easement tax incentive is currently up for renewal, but if approved would allow qualifying farmers to deduct up to 100% of their taxable income over 16 years.¹⁷

A farmer owns a property and completes what is known as a “bargain sale” of the easement—donating part of the value and receiving cash for the rest. This provides both income and tax benefits.

17. “How the Easement Incentive Works,” Land Trust Alliance, <http://www.landtrustalliance.org/policy/tax-matters/campaigns/how-the-easement-incentive-works#Current%20Status%20and%20Future%20Prospects>.

Land resale

Some land trusts purchase land, protect it with a conservation easement, and resell it to farmers. There may be a detailed application process involved and you might not always get a “deal” on the price, but often buying land through a land trust that has experience working with farmers is a good way to make a purchase. One example is the Maine Farmland Trust’s “Buy/Protect/Sell” program.

Example

A land trust purchases a property, issues a call for farmers to apply or contacts a farmer who has reached out to them in the past, and evaluates responses—often including a detailed assessment of each farmer’s business plan. The land trust selects a farmer and negotiates the sale. The land trust then simultaneously puts a conservation easement on the land and sells it to the farmer, reducing the purchase price to the land’s conserved value.

Bargain sale easements

Sales in which the landowner donates part of the easement value and sells the rest. The partial donation can help generate tax benefits for the landowner.

TALKING TO A LANDOWNER ABOUT CONSERVATION EASEMENTS

Not all landowners have heard of land trusts or understand how they function. If you are hoping a landowner will work with a land trust to place a conservation easement on the farm and reduce the purchase price, you may need to provide some guidance.

Introduce the idea to the landowner, explaining how a conservation easement can help preserve the agricultural legacy of their farm and assist in its transfer to a farmer.

Put the landowner in touch with the land trust so that a staff person can explain more about the process and financial implications.

Suggest developing a purchase agreement and a lease to own arrangement with the landowner that is contingent on placing a conservation easement on the farm. In this scenario you could start farming immediately while paying rent (either going towards the purchase or not), with the agreement that you will purchase the property after a set number of years at a reduced price once the landowner sells or donates the easement. This lets you set a price you can afford and start farming, and allows the landowner to receive closer to their desired sale price.

Finding and acquiring land

Land leasing

In some cases, land trusts hold farmland and are willing to lease it to farmers. Many land trusts can't afford to hold land for long periods of time (due to property taxes, maintenance, and other landowner expenses) so the lease periods may be short. Municipalities and land trusts issue a request for proposals (RFPs) or set up an application process to select farmers. The RFP is used to ensure that the process of placing a farmer on the land is fair and complies with the organization's policies for leasing.

Examples

The land trust purchases a property and rents it to a farmer with a lease-to-own agreement in which the farmer has the option to purchase the farm after a set amount of time, such as five years. During this time, the farmer is subject to the terms of the conservation easement that will be placed on the property at the time of sale, but has the flexibility to negotiate the specific terms with the land trust.

*A land trust owns the land while the farmer owns the buildings and has a long-term **ground lease** (often for a 99-year period). See *Equity Trust's website* (equitytrust.org) for more resources on this model.*

A land trust purchases the property and leases it to the farmer. This can be a long-term, 99-year lease, or set up like an incubator property where farmers rotate through on one- to ten-year, or longer, tenures.

Finding land

Land trusts often closely watch the farmland real estate market in the area and can point you to available properties. A few land trusts (such as Columbia Land Conservancy) have formal in-house land linking programs, while others partner with land linking programs in the area (such as the Southern Appalachian Highlands Conservancy and WNC FarmLink), and many more have an informal knowledge of the market.

Networking

Much of the farmland sold in rural areas never enters a formal real estate market. A lot of transactions are based on personal relationships and word-of-mouth communication. Land trusts can help connect you with the local community, other land trusts, funders, or landowners who might want to sell or lease land—especially land of particular conservation, agricultural, or scenic value. If possible, it is also helpful for you to spend time in the community looking at land and talking to people who live there.

Brokerage

Land trusts can act as brokers, facilitating lease arrangements between farmers and landowners as part of their land linking work. They can help vet both landlords and tenants along with handling the financial part of the transaction and making sure the lease arrangement is favorable for both parties. You will need to judge if a land trust is capable of taking on this role or if a different third-party would be a better choice.

Purchase price advice

Because of the land transactions that they undertake, land trusts often have knowledge of current market rates and what land is being valued at in appraisals. They may be able to help you gauge how much you should pay for a piece of land, even if you don't end up working with them to buy it.

General assistance

Facilitation of land transfer between generations

Land trusts can act as an intermediary between generations to provide guidance on land transfers. They may also work with you to purchase a conservation easement on the farm to help offset estate taxes or provide money to invest in the business as the next generation takes it over.

General guidance

A staff member at a land trust that focuses primarily on agricultural lands may be able to offer advice on how to access farmland based on their experience working on other farmland protection projects. The level of guidance that a staff member can offer, especially if they do not typically work on farmland projects, will vary greatly.

Employment

Some land trusts might be looking to hire a farmer to manage a property that they own, such as a community farm. This job could include elements of public education. Working on a community farm, such as one owned by the Trustees of Reservation in Massachusetts, is a rare opportunity to have a secure staff position while farming. Land trusts may also have part- or full-time office employment available that could provide a source of steady, off-farm income for you.

Educational programs

Some land trusts offer workshops on business planning, technical skills, and region-appropriate production techniques. For example, the Southside Community Land Trust in Providence, Rhode Island offers workshops on composting, season extension, and pest management in an urban farming context.

Supporting the local food economy

Land trusts can be strong partners for beginning farmers, in more ways than just preserving farmland. Land trusts can create the link between the farms they preserve and the value those farms provide to the community through public events and marketing campaigns featuring those farms, such as farm tours and local food dinners.

WHAT YOU SHOULD NOT EXPECT FROM LAND TRUSTS

Land trusts can be an excellent option for helping you access land, but it is important to keep in mind that many face operational constraints, which impact their ability to help you.

Lending you money

Land trusts may help you afford land by purchasing the development rights on the property, but the vast majority cannot finance the purchase of your farm. Some of the more progressive farmland trusts realize that there is a need for financing assistance and more may pursue offering bridge loans and other financing options in the future.

Answering technical production questions

Land trusts typically are not prepared to answer questions about production—e.g. “How do I convert this forestland to beef pasture?” or “How do I start a dairy operation?” These questions are best directed at a cooperative extension service in your area, or other technical service provider such as Northeast Organic Farming Association (NOFA) or Midwest Organic & Sustainable Education Services (MOSES).

Working outside their mission

Land trusts are governed by their mission. They have an obligation to their board, funders, and members to uphold and operate according to it. Most land trusts display their mission prominently on their websites along with other information about the work that they do—*read this material*. Look for land trusts with missions that mention farmland, working lands, agricultural viability, or similar. That being said, even if the land trust is not farm-oriented, you may find a situation where they are looking to branch out into this work and are willing to partner with you.

Working beyond their capacity

The ability of a land trust to carry out its mission—even if it involves farmland access—is limited by both funding and staff. The availability of funding (both municipal and donor-driven) will significantly determine the land trust’s ability to work with you. Having access to municipal funding is particularly critical for land trusts to be able to purchase easements.

Working on properties that are too small

For many land trusts, it is simply not feasible to protect land below a certain acreage because of the fixed costs they encounter for each project (e.g. survey, appraisal, legal fees). The size barrier varies significantly by region and mission of the land trust, but 15-25 acres is usually a minimum. Although many small properties may present great conservation opportunities in themselves, they have to be considered in context of the entire landscape. Properties that are surrounded by other conserved land may be more desirable because they create greater conservation benefits.



Maine Farmland Trust

LAND TRUST'S CONSERVATION EASEMENT PURCHASE MAKES LAND AFFORDABLE FOR YOUNG FARMERS

BOWDOINHAM, MAINE David and Meredith Asmussen were able to purchase a 74-acre property for their organic operation, Blue Bell Farm, in Bowdoinham, Maine with the help of the Maine Farmland Trust. They found the property on the land trust's FarmLink service and were able to afford it once the land trust purchased an easement from the previous owner.

bluebellfarmmaine.com | mofga.org
mainefarmlandtrust.org

THINGS TO KNOW ABOUT CONSERVATION EASEMENTS

Ownership

You do not give up ownership of the land when you sell or donate a conservation easement.

Exclusions

Conservation easements do not have to cover the entire property. Often, a building envelope is excluded from the easement or a floating building zone is granted, giving the landowner a certain number of square feet in which they can build. The size of the envelope is based on anticipated future structures, total farm size, and farm type. A typical exclusion is 2 to 10 acres.

Perpetuity

Conservation easements run with the land, which means they become part of the chain of title and stay in effect even as ownership of the land transfers. Land under a conservation easement can be sold, mortgaged, and passed on to future generations. In the event of a foreclosure, the conservation easement will remain in effect.

Changes

Many conservation easements contain an amendment provision that allows changes if they are consistent with the purpose of the easement, but amendments should be considered a last resort. Further restrictions (either additional acreage or more land use controls) can be added to the easement at a later time, but to get restrictions or land removed from the easement is extremely challenging. If the purpose of the easement has become impossible or impractical, it is possible for the holder of the easement (the land trust) to ask a court for modification or termination of the easement, called a *cy pres* ruling. In this ruling, the court will honor the original intent of the easement as closely as possible. There is no guarantee, however, that a court will allow for easement modification.

Tax benefits

Separating the development rights from the property lowers the value of the land, which can reduce estate taxes and may lower property taxes. Consult your land trust and a tax professional for more information.¹⁸

18. Jeff Jones, William Wombacher, Lynne Sherrod, Heather McMillian, "Common Questions on Conservation Easements," Center for Collaborative Conservation, Colorado State University, 2009.

NATURAL RESOURCES & FARMLAND CONSERVATION

Water

The water rights that come with the land must be adequate to support the conservation purposes of the easement. For an agricultural easement, this means the property must have water rights that will support agricultural productivity. In many western states, water rights must be appraised in addition to the land to determine their value as part of the easement. In some states, such as Colorado, conservation organizations must perform due diligence on water rights in order to accept conservation easements that qualify for state tax exemptions.¹⁹

Minerals

The tax code related to conservation easements prohibits surface mining. Before agreeing to purchase the easement on a property, a land trust may need to have a mineral remoteness assessment, or mineral report, produced by a certified geologist to determine that there are no commercially desirable minerals on the property, or that extraction of them is not commercially viable. If you want to maintain rights to mineral extractions such as sand, gravel, rock, or soil, it is important that the amount and location of the activity does not interfere with the purposes of the conservation easement.²⁰

Oil and gas

It is possible to retain oil and gas drilling rights as long as “the drilling will have no more than a temporary, localized impact and will not interfere with the overall conservation purpose of the easement.”²¹ Local regulations and land trust policies will vary.

19. Sarah Bates, “Land Trusts and Water: Strategies and Resources for Addressing Water in Western Land Conservation,” Land Trust Alliance, 2014.

20. Jeff Jones, William Wombacher, Lynne Sherrod, Heather McMillian, “Common Questions on Conservation Easements,” Center for Collaborative Conservation, Colorado State University, 2009.

21. Jeff Jones, William Wombacher, Lynne Sherrod, Heather McMillian, “Common Questions on Conservation Easements,” Center for Collaborative Conservation, Colorado State University, 2009.



CASE STUDY

Photo courtesy of Ben Brown

FARMER BEN BROWN ON SONNY'S FARM

CEDAR, MICHIGAN In early 2014, the Leelanau Conservancy sold 15 acres of agricultural land that had been protected with a conservation easement to farmer Ben Brown. Ben had received a degree in ecological agriculture and worked on seven different farms before partnering with the land trust. Before purchasing the land, Ben had rented it from the land trust for three years under a 30-month lease with an option to buy after 24 months. He produces pasture-raised chickens and turkeys, along with other animals. The 15-acre parcel that Ben farms is part of a larger farm property bordering Little Traverse Lake that the Conservancy purchased in 2010.

sonnyswansonfarm.com | leelanauconservancy.org

THINGS TO CONSIDER BEFORE WORKING WITH A LAND TRUST

To keep in mind

- Land trusts ultimately exist to further their conservation work, not necessarily your personal success (although this is their goal whenever possible).
- The land trust holds the development rights—this means that all major changes to the property must be run by the trust first.
- The land trust will be actively monitoring the property, which typically involves annual site visits.
- The terms of the easement do not change easily, if at all.
- A conservation easement will reduce the resale value of your property below its development value.
- A conservation easement exists in perpetuity and will affect your heirs.
- The size of a loan offered by a bank to mortgage a conserved property will be reduced because the easement has reduced the property value, and it is possible that a bank will not provide a loan for the purchase of a conserved property.
- As with most legal agreements, what makes the agreement work is a good relationship between both parties. Put some time and effort into building a positive relationship with the land trust.

Before you partner with a land trust

- Before you enter into this process, talk to advisors you trust. There are benefits and drawbacks of working with a land trust that will be specific to your situation.
- Draw on the experience of other organizations in your area that may have insights into the work of a potential land trust partner. Land for Good (landforgood.org) is one example of a New England-based organization that has extensive expertise on land access.
- A conservation easement, by nature, will constrain what you can do on the property in perpetuity. Try to think twenty years down the road and imagine what the decision will mean for you then.
- Be willing to be flexible and patient. Don't automatically assume the land trust has money ready to spend on you and your land search. Be open to the fact that purchasing property might not be the best option for you and your business model. Be ready for things to go wrong and take longer than you expect. But also be prepared for strokes of good luck, quick decisions, and immense satisfaction.



Holly Rippon-Butler

2

BUILDING THE RELATIONSHIP

HOW TO APPROACH AND SUCCESSFULLY
PARTNER WITH A LAND TRUST



Great Song Farm

FARMER LANDOWNER MATCH PROGRAM HELPS YOUNG FARMERS GET ON THE LAND

MILAN, NEW YORK The farmers who started Great Song Farm found a home for their business in Milan, New York with the help of Columbia Land Conservancy's Farmer Landowner Match Program.

Although they did not grow up farming, Jen Carson and Anthony Mecca spent years after college working on farms around the U.S. before deciding they wanted to start their own community supported agriculture (CSA) operation in the Hudson Valley. Unable to afford the purchase cost of land, which is especially high in that region due to development pressure, they turned to the Match Program for help.

The farmers' business model, which involves community members pre-purchasing shares of vegetables to pick up each week at the farm during the harvest, appealed to landowners Larry and Betti Steel. Columbia Land Conservancy facilitated the introduction between the landowners and the farmers, and the farmers worked out a relationship which gives them the use of the 90 acres of land while allowing the Steels to retain ownership and receive property tax deductions based on an agricultural assessment.

The lease structure for the farm began as a 5-year lease. A long term lease is currently being negotiated. The farmers pay a very small lease fee with a stipulation that once a certain gross income is reached the lease fee will be increased accordingly. Once the increased lease payments begin, the Steels will reserve half of each payment for infrastructure improvements on the farm.

greatsongfarm.com | clctrust.org

FINDING A LAND TRUST

Here are a few places you can look to find land trusts that work in your area:

American Farmland Trust Directory | farmlandinfo.org/directory

This directory provides a comprehensive list of farmland protection organizations, including land trusts and public programs at the state and local level. It is searchable by name of organization, type (private or public), and programs offered.

Land Trust Alliance Directory | findalandtrust.org

The Land Trust Alliance directory provides a map that is searchable by local, statewide, or national land trusts.

USDA Service Center Locator | offices.sc.egov.usda.gov/locator/app

This map is searchable by state and county and will help you find a local NRCS office to contact if you are interested in finding out more about federal funding opportunities in your state.

State Department of Agriculture

Check your state's department of agriculture website for information about a potential state farmland protection program.

WHAT TO LOOK FOR

A qualified land trust

Make sure that you are partnering with a land trust that is qualified to do land conservation work and hold easements. The highest standard of qualification is the Land Trust Alliance's (LTA) Accreditation Program. LTA maintains a list of accredited land trusts here: landtrustalliance.org/land-trusts/accredited-land-trusts. Asking to see a land trust's 501(c)(3) determination letter is another way to verify that they are qualified, and if you have any questions you may consider hiring a tax lawyer. The best way to determine if a land trust is a good fit for you, though, will likely be asking around the community and talking with landowners who have worked with the organization in the past.

Communication

When working with a land trust, you will often be communicating with a single person. It is important to make sure that this person is easy to reach (such as same or next-day email responses and returned phone calls), and understands what you want to accomplish. Quick communication will be important even after the easement is in place because you will need to run certain farm projects by the land trust first (e.g. new barns, some fencing, and logging), and you want them to be responsive. Similarly, you too need to be reliable.

Straightforward procedures

It will be important that the land trust has easily understandable procedures written down to help you through the process.

Shared goals

It is important that you feel you share goals with the land trust and their conservation mission.

What if the land trust doesn't do farmland protection?

You can still talk to them about your project; they may be considering incorporating farmland conservation into their work or be able to direct you to other land trusts or individuals in their network that can help you. Even if they don't specify agricultural preservation in their mission, land trusts can adopt a statement or policy that highlights this work.²²

What if there are no land trust where you want to farm?

This is the case in many parts of the country, especially less populated areas in the South and Midwest. You may find a regional or national group that is interested in the area where you want to farm, or you may find a local town or county that holds easements. You may, however, need to look elsewhere for help accessing land. Mission-based, or "impact", farmland investment is becoming more popular and is another way to get help affording or conserving land.

WHAT TO EXPECT

As land trusts consider whether to take on a project or not, there are usually a few things you can expect:²³

- Interview with the landowner and prospective farmer.
- Site inspection and identification of conservation values.
- Analysis of whether the project meets the land trust's mission, goals, and strategic plan.
- Analysis of the project's compliance with Internal Revenue Code provisions, if applicable, and the public benefit that will be gained through the completion of the project.
- Preparation of a project plan.
- Approval by the land trust's board of directors.
- Analysis of whether you meet their criteria. Some land trusts, such as the Vermont Land Trust (VLT), have specific requirements for working with farmers. VLT defines a qualified farmer as "a person who presently earns at least one-half of his or her gross income from the 'business of farming' (as defined by the IRS)."²⁴

22. "Leasing Land to Farmers: A Handbook for New England Land Trusts, Municipalities and Institutions," Land for Good, 2012.

23. Jane Ellen Hamilton and Jonathan Moore, "Evaluating and Selecting Conservation Projects," The Land Trust Alliance, 2007.

24. Bob Wagner, Kathy Ruhf, et al., "Does Option at Agricultural Value Protect Farmland for Beginning Farmers?: A Policy Analysis," Land for Good, 2013.



INNOVATIVE GROUND LEASE MODEL HELPS MAKE LAND AFFORDABLE AND SECURE FOR FARMERS

THURSTON COUNTY, WASHINGTON In Washington State, the South of the Sound Community Farm Land Trust (SSCFLT) is partnering with farmers to help them access land through an innovative ground lease model. In this model, the land trust purchases just the farmland while the farmers buy the buildings on the property. Then, the farmers sign a 99-year lease with the land trust for the use of that land. This lets the farmers build equity in the buildings while gaining secure access to prime farmland with a relatively small investment up front.

In 2013, the land trust worked with the Creekside Conservancy, local organic farmers Colin Barricklow and Genine Bradwin of Kirsop Farm, and a number of other partners to purchase its first farm property—Scatter Creek Farm & Conservancy. The 147-acre former-dairy farm includes nearly 100 acres of prime farmland with water rights, which are owned by SSCFLT and dedicated to sustainable local food production. In addition, 48 acres of riverfront land are owned by Creekside Conservancy and dedicated to conservation for the protection of wildlife, salmon habitat, and water quality. A portion of the property is leased to Enterprise for Equity, a nonprofit that is creating a farm incubator and new farmer education program.

A number of farm families have benefited from the Scatter Creek Farm & Conservancy project. The Kirsops purchased the farmhouse and barns, and lease 63 acres of the property on which they grow vegetables and grains. The Kirsops are working with Liza Judge and Marianne Copene of August Farm to establish a poultry processing facility on the property. Kendra and Cory Meek are leasing one of the loafing sheds on the property to raise animals for the local 4-H Program; and Wobbly Cart Farm and Flying Cow Creamery are leasing space in the buildings to store equipment and hay.

communityfarmlandtrust.org | enterpriseforequity.org | handeyeoly.com | kirsopfarmwobblycart.com | flyingcowcreamery.com

Adapted from the August 11, 2014 article, “Thurston County’s farmland is disappearing (and what the Community Farm Land Trust is doing about it)” by Addie H. Candib on olywip.org. Photos by Fletcher Ward/Straight Light Studio.

REACHING OUT

It is important to make a great first impression and create a lasting relationship. Higher capacity land trusts may get six to eight requests a week (or more) from farmers and landowners to provide assistance. Here is some advice on setting yourself apart.

Research

Know a little about what the land trust can offer, where they focus their work, and what other land trusts and resources are available in the area.

Make contact

Call or email the conservation director, or equivalent. On the first call, introduce yourself, tell the staff person what you are looking for, and find out if the land trust might be able to help you. If it seems promising, try to schedule an in-person meeting. Don't be afraid to be gently persistent if they don't respond—re-send the email to make sure they got the first one or call again.

Be specific

Being as specific as possible about what you are seeking is critical. Vague requests for help or unclear goals make it less likely that the land trust staff member will be able to engage and help you.

Be convincing

Similar to any job application, you want to draw the staff person in and give them a reason to be excited to work with you.

Personal story

If you are meeting with the land trust in person or can contact them over email, have a one-page letter prepared that introduces you. Make a note of your previous experience and give some details that show you have put thought into your business plan and the location of your potential farm. Above all, show the staff member that you have made some decisions around your business and how you want to manage it.

Business plan

Include a one-page business plan that shows you have thought about how you are going to cover your living expenses and pay debts for the first two to three years of farming. Show that you have thought about why you want to farm where you do and what niche you will fill in the local market. You may wish to take a business planning course. Some land trusts will do an initial consult with farmers on their business plan.

Financial information

Before you approach the land trust, have an idea of what you can really afford if presented with an opportunity. This includes knowing:

Your credit score

You can obtain a free credit report once a year. If you plan on applying for a loan in the next 18 months, you should obtain your credit reports and purchase FICO scores. You can do this at: annualcreditreport.com/index.action.²⁵

What you prequalify for

You can go to your local bank and get pre-approved for a loan, or find out what it would take to qualify for a mortgage. You can also go to your local Farm Service Agency (FSA) office to see if you qualify for any of their farm purchasing programs.

Your costs of living

Tally your typical monthly and yearly costs to determine what your cash flow needs to be to support your costs of living.

Your debts

Plan for how you will manage your debt, including both existing and any new loans.

Your savings

Determine how much money have you saved to put towards the farm purchase and your costs of living.

Farming experience

You don't have to give the land trust a resume of your farm experience, but giving them a sense of why you are qualified to do what your business plan lays out is important. Apprenticeships and community college courses in sustainable agriculture may help demonstrate you are passionate about farming as a career.

A lawyer

Land trusts always recommend you have a lawyer and a financial expert to counsel you on the agreement. Working with a lawyer throughout the process of partnering with a land trust is always a good idea. The most critical, and economical, time to hire one, however, is near the end of the process to help you understand and sign the legal papers involved in closing the deal. At this stage a lot of decisions have already been made, but it is not too late to revise the document or back out of the deal if legal counsel raises red flags. Conservation easements are expensive and permanent; buying land will have a significant impact on your financial situation and it is best to have someone on your side when you enter the process. The Conservation Law Foundation, Farm Commons, and Sustainable Economies Law Center are all good places to start for basic advice and may be able to suggest a lawyer who is familiar with agricultural issues in your area.

Follow up!

The first phone call or email is a good introduction, but what really shows a land trust staff member that you are serious is follow-up. Call them back if you come across another property that you are interested in to show them that you are actively looking and engaged in the process. The more you demonstrate that you have invested in to your land search, the more they will be willing to invest.

25. "Farm Business Development," Maine Farmland Trust website, accessed July 2014.

FINDING THE RIGHT LAND

The land trust

The property will need to comply with the land trust’s overall strategic plan, and with their conservation plan if they have one. This will involve taking into account the conservation value of the land, and possibly adjacent lands. The land trust may have a checklist that they go through before selecting projects.

You

If you are planning on buying land, it is important that you find land that fits your needs now, as well as in the future. Is the land big enough, or close enough to land that you could access, for your operation to grow? Is it within driving distance to markets, nearby schools and other services? Think about what “success” means to you—is it simply finding a good property with the right resources for your farm business, or is it a property that will allow you to be debt-free and financially solvent in a relatively short time? In the ideal world, you could have both.

Questions to ask

What projects are coming up? Find out if the land trust has a specific conservation campaign on its agenda or specific properties that it is considering protecting.

Where is the land trust looking for land? Some land trusts have made maps of the area where they work, showing where the prime soils and priority conservation areas are. Although these maps may not be public, the land trust will be able to discuss their priorities with you.

Is the land that you are looking at currently mortgaged? If so, it will require an agreement from the lender in most states in order to have a conservation easement placed on it. This will involve a legal document called a subordination, and is something that should be considered early in the process.²⁶

If the land is under an easement already, what are the restrictions? If you are buying property that already has an easement on it, or leasing land from a land trust, you will want to find out what the restrictions in the easement are, if there is a management plan required, and if there are any prohibited farming practices.²⁷

SAMPLE LAND TRUST CHECKLIST

- Soils** Most land trusts are looking for good agricultural soils, often referred to as “prime.” You can use the NRCS web soil survey tool to determine if the land that you are interested in contains prime farmland soils (websoilsurvey.sc.egov.usda.gov).
- Development pressure** Land trusts work to protect lands in high development pressure areas first.
- Farm viability** This includes metrics like size, dependence on leased lands, flood zone proximity, and succession planning.
- Farm characteristics** Percent harvested cropland, irrigation potential, etc.
- Cluster effect** Proximity to other conserved farms.
- Special characteristics** Unique conservation value, fundraising potential, priority of geographic location, deep family commitment to farming, and partnership potential.²⁸
- Land encumbrances** Mortgages, debts, or other liens on the land will typically deter a land trust. An existing obligation could take legal priority over an easement, which would allow the bank to foreclose on a property and sell it to a developer.

26. Jeff Jones, William Wombacher, Lynne Sherrod, Heather McMillian, “Common Questions on Conservation Easements,” Center for Collaborative Conservation, Colorado State University, 2009.

27. “Leasing Land to Farmers,” Land for Good, 2012.

28. “Leasing Land to Farmers, Appendix 2,” Land for Good, 2012.



Greta Rybus

FARMERS GAIN LAND SECURITY BY PURCHASING CONSERVED FARM FROM A LAND TRUST

ALBION, MAINE Before they bought their 412-acre property in Albion, Maine, Katia and Brendan Holmes were farming in Massachusetts on 14 different leased fields, never knowing when a landowner might not renew a lease. The couple was able to purchase their own farm, and gain land security, through the help of Maine Farmland Trust's (MFT) Buy, Protect, Sell Program.

MFT had purchased the farm a year before from a retiring dairy farmer and lined up a combination of state and federal grants to pay for an easement on the property. The easement helped reduce the purchase price, making it possible for Katia and Brendan to afford the property where they now run Misty Brook Farm, an organic, full-diet CSA.

To help finance the land purchase, the couple secured a loan from the Farm Service Agency (FSA). While waiting for the FSA money to come through, they took out a bridge loan from CEI, a social-investment group in Maine. CEI also helped them with financing to cover some of their mortgage.

mistybrook.com | ceimaine.org | mainefarmlandtrust.org

USDA FARMLAND DEFINITIONS²⁹

Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is available for these uses. Prime farmland has an adequate and dependable supply of moisture from precipitation or irrigation, a relatively small slope, a favorable temperature and growing season, acceptable acidity or alkalinity, an acceptable salt and sodium content, and few or no rocks.

Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops. Proximity to markets, water supply, and other localized factors determine this classification.

Statewide important farmland is land that does not meet the criteria for prime or unique farmland but is considered to be important in a particular state for the production of food, feed, fiber, forage, and oilseed crops. Criteria are determined by state agencies. Farmland of statewide importance may include tracts of land that have been designated for agriculture by state law.

Locally important soils, like farmland of statewide importance, are found in areas that are not identified as having national or statewide importance. Locally important land is considered to be important for the production of food, feed, fiber, forage, and oilseed crops. This farmland is identified by the appropriate local agencies. Farmland of local importance may include tracts of land that have been designated for agriculture by local ordinance.

29. "Prime and Other Farmland Definitions," USDA website. http://www.nrcs.usda.gov/wps/portal/nrcs/detail/pr/soils/?cid=nrcs141p2_037285.

3

NEGOTIATING & CLOSING THE DEAL

HOW TO CLOSE THE DEAL WITH A LAND
TRUST AND GET ON THE LAND



WHAT WILL BE INVOLVED?

There are some basic steps that will be involved in partnering with a land trust once you have agreed to move forward on a project. This is a good time to get a lawyer involved if you haven't been working with one already.

Land purchase details

If you are purchasing land at the same time as selling a conservation easement, you will need to negotiate both sets of transaction details. Land for Good has more information about land ownership on their website (landforgood.org).

Option to purchase & right of first refusal

If you or the land trust can't afford to purchase the property right away, the land trust may be able to acquire an option to purchase or a right of first refusal. The option to purchase is an agreement with the landowner, sometimes in exchange for a fee (which varies greatly but might be \$5,000 or more) that they will not sell the property to any other buyer for a certain amount of time. The right of first refusal does not restrict the landowner from selling to another buyer, but it means that if the landowner gets another offer, the land trust has an opportunity to match the offer before the landowner sells.

Easement transaction details

The land trust will need to acquire an appraisal, survey, and title search, and may need to purchase title insurance or conduct an environmental audit, before the easement deal can close. You may be asked to cost-share these expenses.

Easement review and agreement

The land trust will draft the easement and send it to you for review. Be sure to read it carefully and have your lawyer review it as well if you are working with one. It is expected that there will be some back and

forth on the language of the easement and the specific requirements. Be sure that all terms are clearly defined and will not restrict your business. It is a good idea to have the various allowed uses and restrictions clearly depicted on a map of the property as well.

Baseline documentation and stewardship plan

The land trust will need to create a baseline documentation of the property to have a record of its condition and features at the time of closing. This will involve taking pictures and making a note of building locations, landscape features, and future management plans. You will have an opportunity to review this document before it is finalized.

Board approval

The board of the land trust is usually made up of influential local community members, farmers, and other professionals, and it will need to review the project before it closes. The board might only meet once a month or once a quarter, so be prepared to wait. You may or may not be asked to be present at the board review of the project.

Recording the easement

The land trust will record the deed with the county registrar by bringing or mailing the paperwork to them and paying a fee. If there is a closing attorney or title attorney that is helping facilitate the transaction, they may take on the responsibility of making sure the deed is recorded. The land trust may hire out the closing to a title company, in which case that organization would record the deed.

HOW LONG WILL THE PROJECT TAKE?

The length of time it will take from your first phone call with the land trust to planting seeds in the ground varies, of course. The minimum time might be two to three months, but that is highly unusual. More typical is anywhere from six months to two years. It is possible it will take as long as four or more years if significant fundraising is involved. Here are some of the factors that influence how long a project will take.

Preparation

How prepared are you and the land trusts to take on this project? Have you gotten your financials in order, do you have a property already in mind, is your business plan ready to go? How much experience does the land trust have with agricultural conservation easements?

Funding

Is funding available to purchase the easement, and from where? State and federal funding will likely take longer due to the application process and requirements. If you are securing a mortgage on the property before you buy, the bank might be hesitant about lending for a property that can't be subdivided. If the mortgage loan amount is less than the appraised market value of property with the easement on it, however, the bank should be fine with lending on that property.

Legal barriers

Problems with obtaining clear title to the land may significantly slow a project down. All of the individuals who have a stake in the property must sign off on the easement, so if there is a large number of stakeholders or if they are difficult to get a hold of, that could present a barrier.

Liens & mortgages

If there is a mortgage on the property at the time the conservation easement is going to be placed on it, the landowner will have to get the bank to consent to the easement as well so in that in the case of a foreclosure the easement is not extinguished. Similarly, a lien holder on the property can say no to the easement and hold up the process.

Impervious surface

These are areas that rain water cannot pass through, such as roofs and pavement (not gravel), permanent greenhouses, barns, roadways, storage sheds, etc., regardless of where they are located in the easement area. Exception: any conservation practice installed to NRCS standards and used for the original purposes. Seasonal greenhouses, those in place for six months or less, are not considered impervious.³⁰

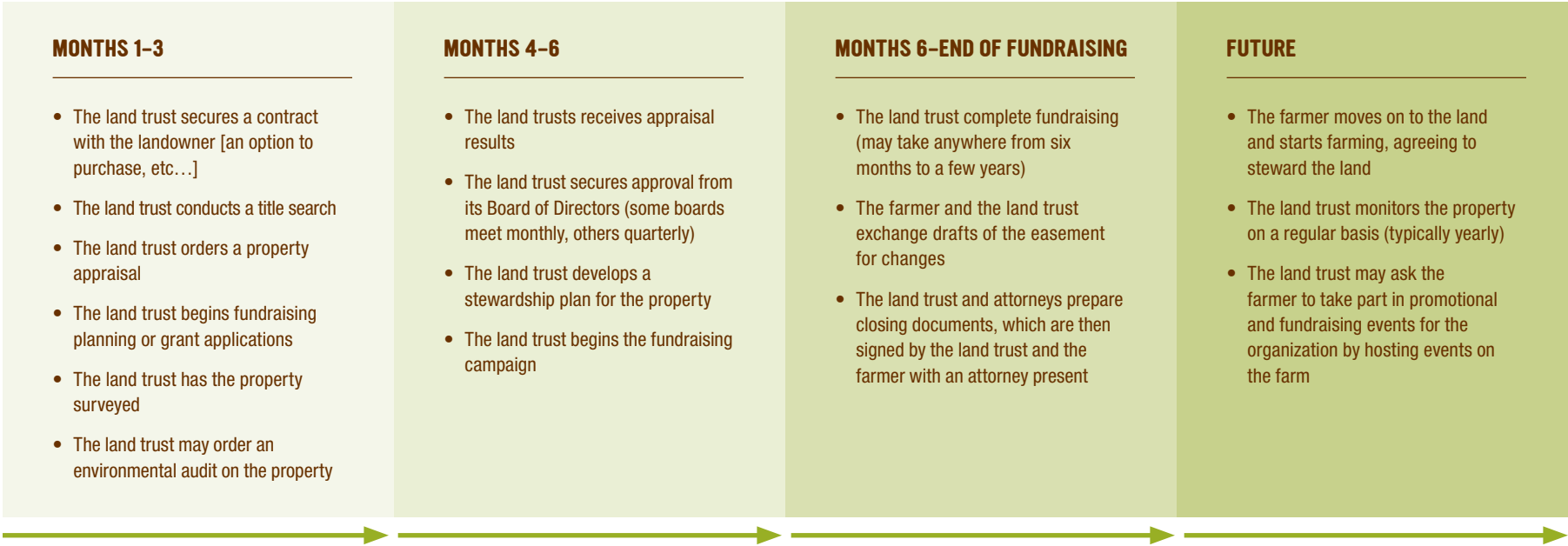
EASEMENT LANGUAGE AND NEGOTIATION

Below are a few examples of things you may wish to negotiate and keep in mind while developing the easement language with the land trust:

- A floating envelope where a second residence could be built on the property.
- The square footage of the building envelope(s).
- Space to build infrastructure. Think about where, and by how much square footage, you may want to expand your business by building additional barns or living areas.
- The boundary locations between different parts of the farm if they are under different easement restrictions (e.g. forest versus fields).
- The location of farm roads.
- Flexibility to install an irrigation system in the future.
- Flexibility to incorporate renewable energy infrastructure into your farm.
- **Impervious surface** allowances (keeping in mind that there may be limits—some state programs only allow up to 5% of the conserved area to be in impervious surfaces).
- A personal use exemption for activities such as harvesting firewood or installing small-scale alternative energy infrastructure.

30. "Farm and Ranch Land Protection Program: 2008 Farm Bill," Connecticut Fact Sheet, www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs142p2_010819.pdf, accessed July 2014.

TYPICAL TIMELINE



HOW MUCH WILL THE PROJECT COST?

The cost of the land

The cost of the land to you will be determined by the market price, value of the development rights, and amount of funding available to purchase these rights. There are many ways the land trust can help reduce the cost of the property, such as by purchasing the conservation easement, but you will ultimately be the one responsible for buying the farm and financing the purchase. This means that it is very important for you to have your finances in order when approaching a land trust. Check out the Greenhorns guidebook, *Affording OURLand*, which can be found on their website (thegreenhorns.net), for more information on potential funding sources.

Transaction fees

These fees range from around \$6,000 to \$30,000 or more.³¹ The land trust may ask you to help cover these fees, but they can also be covered by the fundraising campaign; talk with your land trust about potential options. The transaction fee may include:

- Appraisal
- Title search
- Survey
- Recording fees
- Stewardship fee (this includes insurance for legal challenges to the easement)
- Baseline documentation report (to document the existing natural resources and human activity on the property)
- A mineral remoteness report (if the landowner doesn't own all of the mineral rights)
- An environmental audit (if there is any chance of previous property contamination)

Legal fees

Some farmers found that having a lawyer was the largest cost of the conservation easement process, but not crippling. Typically, you might expect to pay around \$1,500 to have a lawyer advise you on signing a lease and \$1,000 to have a lawyer review documents before a closing. You may be able to negotiate a “farmer rate” or barter for services. If the transaction occurs as you are starting your farm business, you might also be able to write it off as a start-up cost (in the first six or nine months).

31. Jeff Jones, William Wombacher, Lynne Sherrod, Heather McMillian, “Common Questions on Conservation Easements,” Center for Collaborative Conservation, Colorado State University, 2009.

EXAMPLE LAND TRUST TRANSACTION

I. Price of farm on the open market	\$500,000
II. Easement sale	
Value of development rights	\$265,000
Value of conservation easement with Option to Purchase at Agricultural Value (OPAV)	\$65,000
Total value of easement	\$330,000
III. Easement Funding	
Grant funding for easement	\$247,500
– Federal grant for 50% of easement: \$165,000	
– State grant for 25% of easement: \$82,500	
Fundraising campaign	\$82,500
– Community donations: \$52,500	
– Major donations: \$30,000	
Total fundraising	\$330,000
IV. Transaction & Stewardship fees	
Transaction fees owed to land trust by farmer	\$10,000
Stewardship fee owed to land trust by farmer	\$5,000
Total fees	\$15,000
V. Payment	
Farmer “donation” (deducted from the check that the farmer will receive for selling the easement, thereby counting as a donation and qualifying the farmer for tax benefits)	\$15,000
Farmer receives check for easement less the transaction & stewardship fees	\$315,000
VI. Cost to Farmer	
Cost of farm after land trust has purchased development rights & OPAV	\$170,000
Upfront cost of land to farmer (includes transaction & stewardship fees that farmer will get back later as tax benefits)	\$185,000
Legal Fees	\$1,000
Farmer secured loan to cover farm purchase and legal fees	\$186,000

CASE STUDY



Jo Arlow

FARMER LEASES PROTECTED LAND IN WASHINGTON'S PUYALLUP VALLEY

ORTING, WASHINGTON Sanford's Farm is a diverse vegetable and pastured poultry CSA operation in the Puyallup Valley of Washington. Since 2013, the Sanfords have run their business on leased farmland protected by PCC Farmland Trust, a statewide land trust focused on conserving farmland in the rapidly developing Puget Sound region. On one project, the land trust worked with Pierce County to secure funds through the Washington State Wildlife and Recreation Program and the County's Conservation Futures Program. The funds were used to purchase an easement requiring organic production on a 100-acre former dairy farm that was then divided and sold to three farm businesses. The funding helped to secure the land and bridge the increasing gap between the cost of farmland and what farmers, like the Sanfords, can afford.

sanfordsfarm.com | pccfarmlandtrust.org

FUNDING THE PURCHASE OF CONSERVED FARMLAND

If you are partnering with a land trust to buy a property, it is important to know where funding will come from to cover the costs of the transaction and what strings will be attached. The land trust will organize and bear the costs of fundraising, although you may be expected to take part in the effort.

Questions to ask

- Is state or local funding available for conservation?
- Does the land trust partner with foundations regularly?
- Has the land trust accessed federal funding before?
- What barriers are there to the land trust's fundraising for this project?
- What requirements will the different sources of funding carry with them?



Holly Rippon-Butler

Sources of funding

Federal

Many land trusts rely on federal funding to complete easement projects. Federal funding provides up to 50% of the cost of the easement and requires the land trust to generate a 50% match. Funding is authorized in the Farm Bill under the conservation programs and is administered by the National Resources Conservation Service (NRCS) through local offices. The program focus is on productive soils and requires land contain at least 50% prime, unique, statewide, or locally important soil, unless otherwise determined by the State Conservationist.³² This program has requirements that the easement language must meet, so expect that the land trust will have less flexibility in negotiating the terms with you.

State

Some states have programs set up to help fund farmland protection. Often referred to as Purchase of Agricultural Conservation Easement (PACE) programs, these typically provide 50% to 75% of matching funds and are used in conjunction with the federal program. Check with your state department of agriculture to see if this funding is available where you live. Unfortunately, not all state PACE programs are funded consistently or adequately enough to meet demand. This means you may have to wait in line to access these funds.

³². Farm and Ranch Lands Protection Program, USDA eDirectives, <http://directives.sc.egov.usda.gov/RollupViewer.aspx?hid=17115>.

County or town funding

Similar to states, towns or counties may have funding set aside for farmland preservation. Check with your local government office to see if this funding is available where you live.

Fundraising

This may include raising money from the land trust's members and board, community members, your CSA members, and major donors. The land trust will likely ask you to be a part of the fundraising campaign, which will involve reaching out to your email contacts if you have a farm newsletter and hosting fundraising events on the farm if you have access to land while the fundraising is in process. You will need to be comfortable asking for money if you plan to work with a land trust to help fund your purchase. Be willing to think creatively about all of the angles from which you can gain supporters—local food enthusiasts, friends, and family are good people to start with.

Grants

Grants are not typically made to individuals for land purchases, but the land trust may work with private foundations to help fund the purchase of the conservation easement. Private grants, unlike most public funding, can in some cases be applied towards transaction costs, such as the appraisal.

Innovative investor financing

Socially responsible farmland investment is a developing and diverse sector. Farmland investors and goals range widely. Investors include everything from large farmland real estate investment trusts (REITs) to slow money funds and options like Kiva Zip or crowdsourcing. This kind of funding can have many benefits, such as support of good agricultural practices and environmental stewardship that improves the quality of their investment and health of the soil. Investors want to see farmers succeed, which makes them an excellent funding source for negotiating added benefits, such as modified crop insurance, a flexible payment schedule, and alternative payback methods—in farm dinners, produce, or hunting rights on the land, for example—instead of cash. Farmland investment can also have many drawbacks, however, and should be considered carefully. We recommend taking a look at Land for Good's report, *Farmland Investors* (landforgood.org).³³

Loans

You may have difficulty securing a traditional loan from a bank if you are trying to purchase a farm property that includes both the farm and a house. Banks view this as a risky investment because they don't want to end up with the farm business as well as the house if you default. Most conservation easements do not allow subdivision, which gives some banks pause. You may have the best luck with agricultural lenders, such as Farm Credit or the USDA Farm Service Agency.

NON-TRADITIONAL LOAN ALTERNATIVES

Seller-backed mortgage

If the bank won't fund your property purchase, you can try to get a seller-backed mortgage, which can be a great option for both the seller and the buyer. If the buyer defaults, the seller gets their property back and the mortgage becomes just like as if they had been collecting lease payments. They may also appreciate having the money from the property sale paid out over time so it helps them manage their cash flow.

Loan against marketable securities

This is another alternative to a traditional mortgage. If you have a Roth IRA and have accumulated even \$15,000–\$20,000 in savings, this can allow you to borrow against your securities. This means that the property is not the collateral, your investments are. Parents or other family members can also provide securities in their home or assets.

33. "Farmland Investors: An Exploration for New England and Beyond," Land for Good, 2013.

WHAT TO EXPECT IN THE FUTURE

If you are leasing land from a land trust, purchasing land with an easement on it, or selling a conservation easement, your relationship with the land trust will continue far beyond when you first get on the land. Land trusts are required to steward properties in perpetuity and you will be expected to cooperate with them to make sure the easement is upheld.

One way to help minimize any potential problems is to ask your land trust for a bulleted list that lays out all the approvals that are required, in what form, and how far ahead of time to comply with the easement terms.



Holly Rippon-Butler

Participants in the Agricultural Stewardship Association's (Greenwich, New York) Farms, Food and Photography summer camp visit a farm that the land trust helped put a conservation easement on.

Things to expect as you start farming on conserved land

Communication

It is very important to respect your partnership with the land trust and keep communication open. You should keep the land trust informed of all major changes you plan on making, such as building a barn. Often, the easement will stipulate the time period in which a land trust must get back to you about these projects (typically a maximum of 120 days).

Stewardship and monitoring visits

A land trust staff member will typically visit the property once a year to make sure the easement is being upheld and to build a relationship with the landowner. The staff person will call you before they come to the farm and may encourage you to walk the property with them. If any violations of easement terms are discovered, the land trust will work with you to resolve them.

Violations

Land trusts are required to have a violation policy, which they must follow. This usually involves a committee that decides how to handle specific instances. Most violations, if minor, will involve the land trust contacting you and asking for a voluntary fix. If it is a major or clearly intentional violation, however, it may result in litigation. If you have done something that is allowed but should have required a notification, the land trust will often just ask you to put it in writing. Be aware of third-party violations, such as a neighbor cutting down trees on your property by mistake, which you can be liable for as well.

On-farm programming

Most agricultural easements do not include public access, but many land trusts do regular on-farm programming and may ask you to host. The land trust should typically carry the insurance for these types of activities, but it is always a good idea to double check with them.



Leelanau Conservancy

THE HISTORIC DEYOUNG FARMSTEAD

TRAVERSE CITY, MICHIGAN In 2013, the Leelanau Conservancy welcomed Christopher and Samantha Graves as renters on the Conservancy's 145-acre DeYoung Historic Farm and Natural Area. The homestead is located outside of Traverse City, Michigan. The land trust purchased the property, which had only changed hands twice before in its two-century history, in partnership with Eastern Michigan University's Historic Preservation Program. The University now uses the homestead as a field site for its students who are helping renovate the buildings while the property remains a working farm.

The Graves were chosen by the land trust through a proposal process and are fitting in to the historic and public nature of the farm. They have planted a permaculture demonstration orchard, including historic varieties of apple trees, on 12 acres of land surrounding the farmstead. A public path runs through the property and the Graves often give formal and informal tours to visitors.

The farmers have a 10-year lease with 4-5 year renewals on 12 acres, plus non-exclusive use of the upper and lower barns and old milkhouse. Their lease includes agreeing to an environmentally sound management plan that compliments the land trust's goals for the DeYoung Natural Area.

healingtreefarm.org | leelanauconservancy.org

CONCLUSION

Drive past a typical American shopping center and you will see rows of identical box stores, acres of pavement, and a dizzying array of florescent signs.

The stores were likely constructed there because of the land on which they sit. The ground was flat, close to a market, and up for sale. In other words—it was an ideal location to build a business.

For decades, agricultural land trusts have been fighting to keep this land from being developed. In the past few years, more and more land trusts have begun to recognize the critical need to work closely with farmers to ensure that not only is the land protected from development, but that it stays in the hands of farmers as well. These organizations are your allies.

We hope that this book has provided you with the resources and information you need to cultivate and grow your relationship with a land trust. Working together could mean that the next time a good, flat piece of land next to a market is up for sale, it is your business, rather than a box store, that gets built.

APPENDIX: INTERVIEWEES

Sarah Bates

Deputy Director, Northern Rockies,
Prairies and Pacific Region
National Wildlife Federation
nwf.org

Tim Biello

New York Field Representative
American Farmland Trust
newyork.farmland.org

Racey Bingham

Co-Owner & Farmer
Reber Rock Farm
reberrockfarm.com

Peter Brown

Stewardship Manager
Gallatin Valley Land Trust
gvlt.org

Erica Buswell

Project Manager, Land Protection
Maine Farmland Trust
mainefarmlandtrust.org

Marissa Codey

Conservation and Agricultural Programs
Manager
Columbia Land Conservancy
clctrust.org

Cris Coffin

New England Director
American Farmland Trust
farmland.org/programs/states/ma/new-england.asp

Cameron Farlow

Land Access Coordinator
Western North Carolina Farm Link
wncfarmlink.org

David Harper

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Pee Dee Land Trust
peedeelandtrust.org

Jim Hafner

Deputy Director
Land for Good
landforgood.org

Kendra Johnson

Independent Consultant
Davis, California

Allison Kiehl

Incubator Farm Program Director
Southern Appalachian Highlands
Conservancy
appalachian.org

Ashlee Kleinhammer

Owner & Farmer
North Country Creamery at
Clover Mead Farm
northcountrycreamery.com

David Kotker

Membership Coordinator
Mount Grace Land Conservation Trust
mountgrace.org

David Lynch

Director
Colorado Land Link
[guidestonecolorado.org/
Land-Link-Start](http://guidestonecolorado.org/Land-Link-Start)

Tony Malmberg

Flow Restoration Project Manager
Freshwater Trust
thefreshwatertrust.org

Scott McCaulou

Program Director
National Fish & Wildlife Foundation,
Western Partnership Office
nfwf.org

Tom McCampbell

Independent Consultant
Durango, Colorado

Katie Meiklejohn

Associate Director
Agrarian Freedom Project
agrarianfreedomproject.com

Rich Pederson

City Farm Steward
Southside Community Land Trust
southsideclt.org

Ali Peman-Dupier

Central Coast Representative
California FarmLink
californiafarmlink.org

Katie Petronis

Northern Program Director
Open Space Institute
osiny.org

Sam Plotkin

MS Candidate, University of Montana
Missoula, Montana

Kathy Ruhf

Executive Director
Land for Good
landforgood.org

Zach Smith

Staff Attorney
Colorado Water Trust
coloradowatertrust.org

Tiffany Terry

Manager
Central New Mexico LandLink
mrcog-nm.gov/local-food/land-link

RESOURCES

National Young Farmers Coalition

Holly Rippon-Butler, *Land Access Campaign Manager*
holly@youngfarmers.org | 518.643.3564 x.207
youngfarmers.org/landaccess

Our website contains links to our report, Farmland Conservation 2.0, as well as a list of land-linking organizations and a farmer forum where farmers can post questions and get answers. Check out our [land access page](#) and [land access resources](#), which accompany this guidebook.

Agrarian Trust

agrariantrust.org

Agrarian Trust has a large collection of resources on its website including jobs, strategies, case studies, land opportunities, and news. The website also links to a map that is searchable by organizations and resources, such as land trusts and lawyers, that assist with land access.

American Farmland Trust, Farmland Information Center

farmlandinfo.org

The Farmland Information Center has aggregated and produced a large amount of information on farmland protection, including a directory of conservation organizations, a report on state-level programs, and a page dedicated to beginning farmer resources.

Conservation Law Foundation

clf.org

The Conservation Law Foundation works in New England to protect the region's environment. Their Legal Services Food Hub (legalservicesfoodhub.org) provides pro bono legal services for farmers, food entrepreneurs, and related organizations.

Equity Trust

equitytrust.org

Equity Trust has helpful information and documents related to land access on their website, including a model conservation easement with the option to purchase at agricultural value and a report on preserving farm affordability through shared ownership.

Farm Commons

farmcommons.org

Farm Commons provides education resources for farmers, as well as attorneys, on farm and food law. Their website has a number of resources and webinars with useful information.

Land for Good

landforgood.org

Land for Good helps land seekers, farm families, landowners and communities with land access and tenure-related issues. The organization has produced a number of reports and case studies on land access that are available on their website.

Land Trust Alliance

lta.org

The Land Trust Alliance supports the work of land trusts across the country. Their website has fact sheets, resources, and a map to help locate land trusts that work in your area.

National Conservation Easement Database

conservationeasement.us

This site provides a searchable map of conservation easements in the United States. The information is sortable by the type of organization holding the easement. Easement listings are voluntary, and therefore incomplete, but you may be able to use this map to see what conservation work has been done in your area.

Natural Resources Conservation Service

nrcs.usda.gov

The NRCS website is the government clearinghouse for conservation-related information. The site contains a directory of state-NRCS offices and a link to the web soil survey, which is an interactive tool that allows you to explore the soil characteristics of a parcel of land.

Sustainable Economies Law Center

theselc.org

SELCL has extensive online resources with legal guidelines, answers to frequently asked questions, and templates relevant to food and farming topics.



YOUNGFARMERS.ORG

