

Preserving Affordable Working Farms

What does it mean to preserve farms? A farm is more than open land. A farm requires infrastructure and environmental resources—water, good soils, and beneficial organisms. It requires a farmer to manage and care for it, and it requires community—consumers, supportive neighbors, and suppliers of goods and services. Farm preservation will be truly successful to the extent that multiple social, environmental, and economic considerations are addressed now and for the future.

For farmers, preserving farms means providing secure access to affordable land and housing along with opportunities to build a sustainable, perhaps intergenerational, business; to acquire equity, and to invest long term in the land.

For communities, preserving farms means ensuring food security—healthy, affordable, accessible food; maintaining a strong local economy; preserving working landscapes, community character, and open space; and protecting water resources, soil quality, and ecosystem services of well stewarded land.

For future generations, preserving farms means ensuring that all these benefits continue in perpetuity.



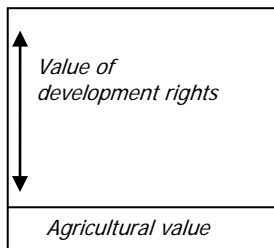
Farms must be affordable for farmers.

In many regions of the country, active farming is increasingly threatened because the price of farmland is beyond what farmers can afford. This is a problem especially for new farmers, and for rapidly developing communities that desire a viable agricultural economy and access to regional food.

Why are farms unaffordable to farmers?

In many parts of the country, the market value of farmland greatly exceeds its agricultural value, sometimes by as much as

Unrestricted market value



ten times. The market value is based on the “highest and best use” of the land—understood as the use that provides the highest price, i.e. development. Removing the development rights through the placement of a *conservation easement* is one part of farm preservation. The landowner gives up the rights to

develop the land by voluntarily transferring those rights through sale or donation to a nonprofit land trust or government agency that will hold them—thus *removing* them permanently from the marketplace.

Preventing development is not enough

In some areas, removing development rights brings the market value of the restricted land to an affordable level for farmers. However, in many markets, the price of restricted land is driven up by its “estate value.” This means that even without the development potential, non-farmers may purchase these properties for their amenity values, driving the price beyond what most farmers can afford. Farmers simply cannot compete with the buying power of people seeking rural estates.

Not only aspiring and start-up farmers suffer in this situation. Farmers seeking to relocate or expand operations are

challenged to find affordable properties to buy. Retiring farmers, lacking succession plans that address affordability for the next generation, wind up selling their farms to non-farmers. As a result, the number of farms in a community can decrease to the point where there are no longer enough to support secondary businesses—agricultural suppliers, shippers, etc.—that are essential to an agricultural economy. As farming dwindles, the face of the local community changes and, at the same time, consumers are deprived of the opportunity to purchase locally produced food.

Tools to address affordability

How can we balance the interest of retiring farmers and other farmland owners in realizing the value of their land with the needs of new and existing farmers to acquire farms at affordable prices, and the interests of communities that want to sustain an agricultural economy? The concept underlying traditional conservation easements—sharing costs and rights associated with land ownership—is key to new models of farm protection. The removal of ownership rights that farmers don’t need can lower the price of farmland, making it affordable for farming.

A second approach to preserving affordable farms is drawn from the community land trust (CLT) world. CLTs (as distinguished from conservation land trusts) focus on affordable housing. In this model, CLTs hold title to a property while residents own a house on the property and hold a long-term, inheritable *ground lease* on the land. Affordability is addressed because the homeowner doesn’t pay for the land. An important benefit is that the homeowner builds equity in the home, and can sell it—but the price remains affordable for future owners.

Each of these tools for preserving affordability—ground lease and easement—can be adapted for use with working farms, with ownership and stewardship responsibilities shared in such a way as to give farmers the rights they need while removing rights that would make an undesirable change of use possible or threaten long-term community interests.

Preserving farm affordability through “shared ownership”

Ownership of real estate is not, in our legal system, a single all-inclusive right but rather a “bundle of rights” that can be separated. Water, mineral, timber, and grazing rights, rights of way, and development rights are all specific and partial rights that can be conveyed separately from other property rights. “Shared-ownership” approaches to farm preservation use this same understanding to give farmers the elements of land ownership they need, while removing those rights that they neither need nor can afford. These approaches balance the interests and needs of farmers with those of the communities they serve.

There are two basic shared-ownership or shared-stewardship models for permanently preserving affordable working farms. One draws inspiration from conservation easements, the other from the CLT ground lease. Both have been significantly adapted to meet specific farm protection and affordability goals. Although structurally quite different, in practice the two models provide very similar outcomes: farmers can gain access to land, develop their business, invest in the land and infrastructure, and build equity, while the community—through a land trust or other stewardship institution—ensures active agriculture and land stewardship.

Each model has been adopted and used by land trusts, farmers, state agencies, and others across the country in a variety of forms. Listed below are the key elements of each model as Equity Trust applies them, based on two decades preserving affordable working farms.

1. Agricultural conservation easement with option to purchase at agricultural value

Structure: Farmer holds title to the property while a land trust or similar stewardship institution holds and monitors the easement.

Key elements:

- As in standard conservation easements, development of the farmland is prohibited or restricted.
- Easement includes an affirmative requirement that the land be actively farmed.
- Farmer/owner residency is usually required.
- An “option to purchase at agricultural value” (OPAV) ensures that when the farm is eventually sold, it will be to another farmer at its agricultural value thus maintaining affordability over time.
- The easement sets forth permitted and required farming activities along with stewardship guidelines, while allowing for changing circumstances.

2. Agricultural ground lease with tenant ownership of improvements

Structure: Title is held by a land trust or other stewardship institution and a “ground lease” conveys occupancy and use rights to the farmer.

Key elements:

- Secure land tenure is provided through a long-term (typically 99-year) inheritable lease with provisions for renewal.
- The farmer buys farmhouse and/or other existing improvements and may develop and own additional improvements subject to the terms of the lease. When s/he gives up the lease, s/he can sell improvements, but resale price will be limited to preserve affordability over time.
- Lease requires active farming.
- Lease normally requires farmer occupancy.
- Lease sets forth permitted and required farming activities along with stewardship guidelines, while allowing for changing circumstances.

Farm Affordability in Action: Sample Equity Trust Farm Preservation Projects

Farm	Live Power Community Farm	Roxbury Farm	Caretaker Farm
Approach	Agricultural Conservation Easement with OPAV	Agricultural Ground Lease	Combination of Both
Location	Covelo, CA	Kinderhook, NY	Williamstown, MA
Webpage	livepower.org	roxburyfarm.com	caretakerfarm.org
Farm description	CSA farm on 40 acres in Covelo, CA, with nearly 200 members in Mendocino County & San Francisco	CSA farm on 300 acres in Columbia County, NY, serving 1200 members from Albany to New York City.	200-member diversified CSA farm on 35 acres in Williamstown, MA
How it works	Farmers own land, Equity Trust holds easement with affirmative farming requirement and OPAV.	Equity Trust holds title to half the land on which farmers own improvements and hold a 99-year renewable lease. Other portion of farm is owned by farmers with Open Space Institute holding a conservation easement.	Williamstown Rural Lands Foundation owns the land; Commonwealth of Massachusetts holds conservation easement with OPAV on the farmland; farmers own improvements subject to resale restrictions.

For further information, see: *Preserving Farms for Farmers: A manual for those working to keep farms affordable*, Equity Trust, Inc. 2009. Sample lease and easement documents, with commentaries, are also available on-line at www.equitytrust.org.