

FARMING FOR WILDLIFE

COW, PLOW, AX, FIRE & GUN

Aldo Leopold espoused five basic tools to restore and enhance wildlife: cow, plow, ax, fire and gun (*Game Management*, 1933). While “these have had a very negative impact on wildlife when not used properly,” says Gary Homerstad, technical guidance biologist with Texas Parks and Wildlife, today farmers and ranchers have improved and adapted them. Homerstad says the management of land for wildlife is relatively new, and is eliciting a new land ethic—one of stewardship of the resource. He says, “Aldo Leopold said you can’t teach a new land ethic, it must evolve. This is coming to fruition here. It’s the way of the future.”

Landowners are using a variety of techniques, depending upon the type of land, their agricultural operation and the wildlife native to their region. What follows are short summaries of some of the most common techniques and contacts to help you find more information.

Convert a portion of the ranch exclusively for wildlife. Some cattle ranchers have made development of wildlife habitat a primary ranching endeavor. In Texas, Sal Salinas fenced the perimeter of a portion of his family’s 7000-acre ranch and planted drought-tolerant, legume-type plants for deer as well as grains with hard seed for game birds. Salinas also established watering facilities in this semi-arid area. “With only 17 inches of rain a year, we are limited in terms of what we can produce. But the habitat and vegetation native to that region is conducive to a great variety of game: deer, coyotes, javalina, and game birds, as well as migratory birds.” He figures the income from hunting leases will exceed what he earned from beef cattle. Similar efforts are sponsored by Ranching for Wildlife in Colorado. *continued on page 6*

INNOVATIONS

NEBRASKA’S BEGINNING FARMER TAX CREDIT ACT

“We were talking about what could be done to start cultivating a new generation of farmers and ranchers,” says John Bailey, farm and community policy program leader with the Center for Rural Affairs in Walthill, Nebraska. The talk led to action and now Nebraska farmers who lease agricultural land to beginning farmers will be eligible for an income tax credit. Legislative bill 630 was adopted by the state legislature and authorizes credit against earnings from leases to:

- Encourage people to seek careers in farming;
- Retain established farms;
- Create and retain new farm jobs, and
- Attract investment in rural Nebraska.

In the fall of 1998, the Center for Rural Affairs brought together a group of people from throughout the state—farmers, legislators, academics, and representatives from farming organizations—to discuss ways to encourage beginning farmers. They decided to revive a 1998 bill that had died in the unicameral Agriculture Committee. *continued on page 2*

LANDWORKS

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American Farmland Trust is the only private, nonprofit conservation organization dedicated to protecting the nation's strategic agricultural resources. Founded in 1980, AFT works to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment.

Basic membership is \$20 per year. For membership or general information about AFT, contact the National Office at 1200 18th Street, N.W., Suite 800, Washington, DC, 20036, (202) 331-7300, or connect to our web page at <http://www.farmland.org>

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**Nebraska's Beginning
Farmer Tax Credit Act**
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Innovations *continued from page 1*

The bill passed easily in a 30-6 vote on May 20. The only issues raised were concerns about the potential cost, and whether the incentive should be for the beginning farmer rather than the landowner. "The last thing a beginning farmer needs is an income tax break," says Roger Wehrbein, state senator from Plattsmouth whose family is in farming. "The retiring farmer is the one with an income tax problem." The Governor signed on May 26, and is appointing a Beginning Farmer Board. This Board will be comprised of the Director of Agriculture (or designee), the Tax Commissioner (or designee), an agricultural credit lender, an academic with knowledge of agricultural economics and three representative farmers, one from each of the three congressional districts.

The Beginning Farmer Board will approve and certify eligible participants—both owners of agricultural assets and beginning farmers. In addition to offering educational and financial management programs to beginning farmers, the Board will advocate joint ventures with banking institutions and will propose changes in policies that impede entering farmers. These policies mostly involve credit and crop insurance, says Bailey. "Credit and insurance are based on historical yields and practices," he says, which a beginning farmer has not yet established. "On some policies, beginning farmers don't qualify, or they receive less credit at a higher price." Since agricultural loans are usually a matter of congressional or state appropriations, the Board may advocate for a larger appropriation, and also for federal guarantees of state agricultural bonds.

The tax credit will take effect January 1, 2001. Nebraska landowners who derive at least 50 percent of their income from farming or livestock production, who provide the majority of labor and management of a farm, and whose net worth is at least \$100,000 will receive an income tax credit of five percent of earnings from a share-rental agreement over three years. The farm must be at least 10 acres, and deemed large enough to support a beginning farmer. Viability and size depend on region, land quality and type, the type of farming operation and the type of crops or livestock to be raised.

To be certified, beginning farmers must have adequate farming or livestock production experience or education in the field. They must provide the majority of labor and management of the farm, and provide projected earnings statements that document anticipated income. Their net worth must not exceed \$100,000, and they must demonstrate a need for assistance. Finally, to participate in the program, they must submit nutrient management and soil conservation plans, and attend a financial management program. According to Bailey, financial management is critical. "Younger people don't have much financial experience, and these days farming is a major business investment. If you're going to protect the existing farmer, who is taking some risk in leasing his land to a new farmer or rancher, you want that new farmer or rancher to have some training. We hope these will become long-term relationships."

The National Farm Transition Network hopes other states will adopt similar measures. To that end, it will present a resolution before the annual meeting of State Departments of Agriculture in November, encouraging support of such tax incentives across the nation. 

USING RESOURCES WISELY

PASSING DOWN THE FARM

Congress spent the summer debating tax law changes, including the controversial proposal to phase out and eliminate the estate tax by 2008. President Clinton is expected to veto this bill, but with most of our farmland in the hands of retirement-age producers, how they plan their estates will profoundly effect

the future of America's agricultural land. According to the 1997 Census of Agriculture, since 1982 the average age of farmers increased from 50.5 to 54.3 years. More alarming, while the older generation is getting older, very few young people are entering the field. From 1982 - 1997, farmers aged 65 and over increased by 24 percent, while those under age 35 declined by 58 percent. According to Bill Silberstein, a Denver-based attorney specializing in conservation estate planning, "The estate tax is the highest rate tax facing American farmers. Without taking advantage of opportunities for estate planning, the land often has to be sold to pay the estate taxes due after the death of the landowner."

The hefty estate tax starts at 37 percent and can be as much as 55 percent. Attorney Todd Mayo (www.mayolawfirm.com) says, "Estate tax at a minimum forces farm families to undertake planning they might not otherwise undertake—to reduce the size of inheritance through gifts, trusts, discounting or other methods." Since conservation easements are appraised at their restricted value and not full market value, it also is an incentive for protecting agricultural land.

The estate tax often is seen as a justifiable tax on the wealthy. But wealthy people generally create trusts, limited partnerships, and other mechanisms to avoid paying it. Typically land rich but cash poor, farmers often are reluctant to pay attorneys and financial advisors for similar estate planning. Is it worth it?

"You bet," says AFT's Jerry Cosgrove. "Fair isn't always equal." If the only substantial family asset is land, producers must develop strategies to provide a legacy for all children, not just the ones interested in agriculture. Dividing the land equally can destroy a commercial operation; if small parcels are not economically sustainable, the land is likely to be sold as estates or sub-divided for development rather than farmed. But if one child inherits the land, what's left for other siblings?

"Farmland is getting converted because people don't do estate planning," says Cosgrove. He recommends a long-term strategy to diversify the farm family's asset portfolio. "Farmers are notorious for plowing all their income back in the land." One way to get around this is to sell development rights prior to death. The proceeds can be invested in life insurance, retirement accounts and other liquid assets more easily divided among survivors. As an alternative, Mayo suggests placing the land in a trust with the farming heir as co-trustee. The farming heir leases the land from the trust and payments are divided equally. "The return may not be as great for the non-farming child, but you keep the land intact. You haven't divided ownership of the property, but you've designated who will work it," he says. Many options exist, but it takes time and effort to devise—and periodically revise—an effective plan for the transfer of land and other assets.

At a minimum, an estate plan should accomplish four basic goals:

1. Transfer ownership and management of the agricultural business, land and other assets;
2. Avoid unnecessary income, gift and estate taxes;
3. Ensure financial security and peace of mind for all generations;
4. Develop the next generation's management capacity.

Good estate planning is one of the most important steps that farm families can take to save their land for future generations. But not all producers have heirs and not all heirs want to continue in agriculture. Given the widening gap between America's young and old farmers, unless something is done, millions of acres will transfer out of agriculture before the next Census.

"These days farming is a major business investment. If you're going to protect the existing farmer, you want that new farmer/rancher to have some training."
—John Bailey

Connect

**Passing Down the Farm
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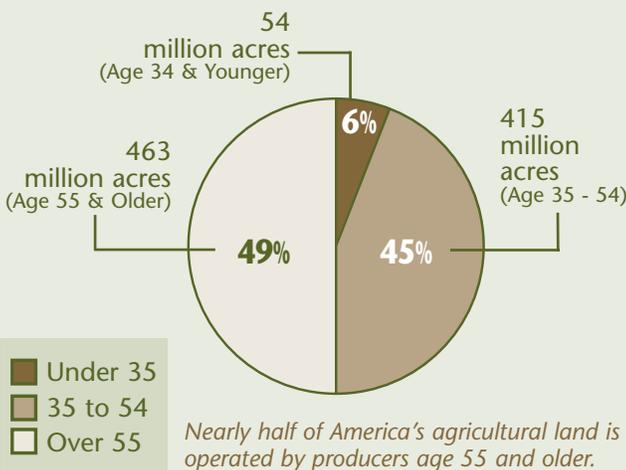
Using Resources Wisely *continued from page 3*

John Baker, coordinator of the National Farm Transition Program, believes too much attention is focused on federal estate and gift taxes. He says other taxes are disincentives for farming as well, such as capital gains taxes on land transfers or income taxes on the lease of farm assets. Thanks to his efforts, the Nebraska legislature has adopted a bill to encourage retiring farmers to enter into share-rental agreements with non-related beginning farmers. (See Innovations p.1) It will take a concerted effort on the part of existing farmers and ranchers, public agencies and advocates to make sure that America's agricultural land remains in the hands of the next generation of producers.

AFT has just updated and revised *Your Land is Your Legacy: A Guide to Planning for the Future of Your Farm*. Available for \$9.95 by calling 1-800-370-4879, it provides information and examples to help farmers, ranchers and their advisors understand both traditional and conservation options to create an effective estate plan. 🚜

LAY OF THE LAND

AGRICULTURAL LAND WORKED BY AGE GROUP (IN MILLIONS OF ACRES)



- Percentage of farmers age 65 and over 26%
- Decline in number of farmers under age 35 from 1982-1997 58%
- Increase in number of farmers over age 65 from 1982-1997 24%
- Rise in average age of farmers from 1982-1997 3.8 yrs
- Total dollar value of agricultural land and buildings expected to change hands in the next ten years \$203 billion

Source: 1997 Census of Agriculture

GOOD DEALS

CONSIDERATIONS IN DRAFTING WILDLIFE EASEMENTS ON AGRICULTURAL LANDS

Conservation easements to protect wildlife habitat are not new. But easements that jointly protect wildlife habitat and agricultural land are rare as hens' teeth. Farming and ranching are highly dynamic and must be able to change to be economically viable. But, agricultural production requires intensive management of natural resources that can destroy wildlife habitat. So how can we draft conservation easements to balance the needs of commercial production and wildlife habitat?

Conservation easements assure permanent protection and can be tailored to accommodate individual properties and interests of the land. Landowners retain title and conditional uses of the land and realize potentially significant reductions in property and estate taxes.

Easements are not one-size-fits-all. This flexibility is essential and must be based on land protection priorities. These will vary with the type of land, the natural communities and wildlife to be protected, the objectives of the owner, the type of farming operation adjacent to the natural resource and—most tricky—the best marriage of these factors.

While no one example is applicable to all situations, the following steps outline a strategy for creating joint agricultural/wildlife easements.

“Because farming and ranching are dynamic businesses which have to change to be economically viable, a management plan gives the flexibility to change with circumstances.”

—Tim Storrow

Identify the resource to be protected.

The first step is to take a thorough ecological inventory to document the habitat that exists on site. Include background information about the ecological function and value of the resource to be protected within the text of the easement. This will clarify the rationale for the restrictions and encourage compliance of subsequent owners who must conform to them.

Also, clearly identify areas excluded from the wildlife easement that are in active agricultural production. A two-part easement can protect agricultural value and operations as well as wildlife resources.

Inventory the location and extent of the resource.

A solid conservation easement must be based on good conservation science. Ask a qualified biologist or other natural scientist to assess the value and function of the resource and also the zones of influence. Include potential impacts, such as agricultural or road runoff, pesticide or herbicide drift and changes in canopy or ground cover. Attach to the easement maps, aerial photographs and descriptions of the exact location and extent of the resource.

Specify allowed and prohibited uses.

Use the inventory and assessment process to identify different zones of use and protection. Tailor a specific set of allowed and prohibited uses to each zone, depending upon potential impact analysis. According to Claudia Kopkowski of the Massachusetts Audubon Society, simply prohibiting certain uses may not be sufficient to protect a resource. Kopkowski suggests conservation easements should include mandated activities as well, such as the removal of invasive, non-native plants. In practice, however, such pro-active requirements may be difficult or impossible to enforce.

Incorporating management techniques in easement language is tricky, according to AFT's land protection manager Tim Storrow. "These are permanent documents which go on land records," he says. "If you want to change or modify the conditions in the easement based on new information or experience, it can be difficult." He suggests using the easement to establish a threshold of protection, then spelling out the management plan in a separate document. "Because farming and ranching are dynamic businesses which have to change to be economically viable, a management plan gives the flexibility to change with circumstances. But these are time consuming and not easy to write," says Storrow.

Outline a procedure for on-going assessment, monitoring and enforcement.

Next, make sure the organization charged with monitoring and enforcing the conditions of the management plan has the right to go on the land. This right of access allows them to inventory, assess and manage the resources as well. In the past, Kopkowski says management guidelines have not been explicit enough. "They are not giving us the kind of guidance necessary to monitor the property and assure its effectiveness," she says.

Jeff Powers, director of land protection with The Nature Conservancy in Peoria, Ill., typically does not write specific management guidelines on easement properties. "It's more cumbersome to get into easement language with a landowner. They don't want to tie their hands." A specific management regime would increase significantly the monitoring aspects of an easement and the ultimate cost of them for those holding the easement. "Even if a land trust inspects a property twice a year, that can be a lot of work given the number of easements they hold," says Powers.

Joint responsibility for monitoring may be the answer. AFT holds a conservation easement with The Nature Conservancy (TNC) that sets up riparian buffer zones along the James River in Virginia. TNC is responsible for monitoring the wildlife component, while AFT keeps track of the farmland. "In fact, we each do both," says Storrow.

Conservation

Wildlife Easements

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Good Deals *continued from page 5*

Provide safe harbor.

In situations where farmers or ranchers fear they may attract endangered species and expose themselves to a regulatory nightmare, a “safe harbor” program would protect landowners who create habitat and management plans. Safe harbor programs allow landowners to use their land for farming and ranching without being subject to enforcement of the Endangered Species Act. In California, AFT included a safe harbor provision in the Habitat Enhancement Landowner Program (HELP) to encourage greater participation by farmers. 🚜

Farming for Wildlife: Cow, Plow, Ax, Fire & Gun

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Pull agricultural practices away from streambanks and water bodies.

Conservation Reserve Programs encourage farmers to plant buffer strips along streams and keep cattle from eroding streambanks. The resulting corridors benefit wildlife as well as water quality. In Washington, Ducks Unlimited works with farmers and the county drainage districts to eliminate erosion on drainage ditches by reducing the slopes from 2:1 to 5:1 or as much as 10:1. When replanted, the vegetation acts as a biofilter, eliminating the slumping and sedimentation. In tidewater areas, these shallower drainage basins increase flood storage where rivers meet the bays, and can function as off-channel overwintering sites for coho salmon.

Rotate grazing.

Overgrazing depletes habitat and contributes to soil compaction, streambank erosion and general deterioration of rangelands. Rotating pastures, alternating cattle with sheep or horses and letting pastures rest reduces the biomass of grass that accumulates and increases the diversity of plant growth. Conservation and grazing are an essential partnership, say ecologists with The Nature Conservancy. TNC placed a conservation easement on 60,000 acres of California ranchland that mandates grazing to help protect habitat for the San Joaquin Valley kit fox.

Use minimum tillage or no tillage.

No-till planting creates minimal disturbance to the soil surface, helps break the ground crust in arid zones, enhances water penetration and slows erosion and sedimentation. Wildlife can use minimally tilled fields for food and cover. Gary Homerstad cites one Texas soybean farmer who used no till and saved a lot in fuel cost, time and equipment over the conventional practice of multiple tillage, with nearly equivalent yields. Used on farms in North Carolina and Virginia as part of the Farm Wildlife Recovery Program, this strategy increases habitat for bobwhite quail since the residue left on the ground increases the invertebrates on which chicks feed. Similarly, a cover crop of native grasses, grains or legumes on fallow fields provides nesting and forage for migratory as well as game birds.

Establish dense field borders.

The Farm Wildlife Recovery Program established 15'-wide strips of early successional, low-growing groundcover (clover, grasses, asters) around crop fields. In addition to cover, nesting and forage for wildlife, the borders harbored fewer noxious weeds than open drainage swales, and benefited water

quality by slowing overland flow, filtering sediments and nutrients, and reducing nitrogen concentrations. The weedy edges, often less productive as agricultural land, also increased beneficial insects.

“Aldo Leopold said you can’t teach a new land ethic, it must evolve. This is coming to fruition here. It’s the way of the future.”
—Gary Homerstad

Farming for Wildlife

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Additional techniques include deferred mowing to allow grassland birds to breed, and prescribed burning to encourage native grasses and depress exotics. Burning returns vital nutrients to the soil and, by reducing the biomass of grasses, allows broadleaf plants to reestablish. Massachusetts Audubon Society provides a comprehensive pamphlet on managing farmlands for grassland birds.

Since wildlife, like most things ecological, do not observe property lines, cooperative efforts will enhance individual measures. In Texas, regional cooperatives provide a forum for ranchers to share ideas and techniques. Says Homerstad, "The chance of success is enhanced if neighbors are aware of what each other is doing." 

POLICY REPORT

TERM EASEMENTS: NEW PROPOSALS RAISE OLD QUESTIONS

From Colorado to Maryland, term easements are being considered to provide landowners with new incentives to protect their agricultural resources and practice good stewardship. Farmers from Maryland's Eastern Shore are proposing a program to provide a 30-year interest free loan of up to 50 percent of the value of the farm in exchange for a 30-year term easement. Although Maryland has successful state and county Purchase of Agricultural Conservation Easement (PACE) programs, Eastern Shore farmers have had little incentive to participate because of the negligible difference between the appraised market value and the agricultural value of their land.

To help regions in Colorado with little development pressure, Great Outdoors Colorado program board members are considering some short-term conservation options including term easements, conservation leases and management agreements. Board members met with key stakeholders in September and decided to continue to explore these alternatives.

Term easements are not new. Pennsylvania's PACE program authorized the purchase of 25-year easements in 1989. Lancaster County, Pennsylvania, negotiated 19 term easements in the mid-1980s. But both the state and the county had discontinued their programs by 1994. Other states have had a better track record. Since 1986, New Jersey's State Agriculture Development Committee has provided more than \$6.3 million in matching grants to farmers for soil and water conservation projects in exchange for 8-year agreements that prohibit non-farm uses and require that the land remain in active agricultural use.

Old or new, term easement programs raise important policy and technical questions. A fundamental policy consideration is whether or not the public will support programs that buy interim protection. It may be difficult to convince people to use limited tax dollars to buy temporary restrictions when they could buy permanent easements instead. Also, will the public regard payments for term easements as a farm subsidy, which could undermine support for other incentive programs?

Some technical questions to address include:

Will the program keep the land available for farming? To be effective, term easement programs should tie interim protection to agricultural economic development initiatives that facilitate conversion to higher value, better capitalized or more sustainable enterprises. Other provisions that head off conversion are a right of first refusal or an option to buy a permanent easement, at a predetermined supplemental price, at the end of the agreement. Lancaster County included a payback requirement in its agreements. Farmers must repay the \$250 per acre they received, plus interest after the 25-year term expires.

How will the term easements be valued? It is tricky to determine compensation for less-than-permanent easements. Annual payments could be calculated based on the difference between the lease value of developable land and the lease

Conservation

To be effective term easement programs should tie interim protection to agricultural economic development initiatives that facilitate conversion to higher value, better capitalized or more sustainable enterprises.

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Policy Report *continued from page 7*

value of agricultural land. But, the sum of those payments over a 20 - 30 year term might approach—or even exceed—the cost of outright purchase. On the other hand, if the one-time payment is too low—as with Pennsylvania's state program—farmers won't find it worthwhile to participate. A few programs have sidestepped the valuation question. The Massachusetts Agricultural Viability Program provides technical assistance and grants to implement farm plans in exchange for 5 or 10-year easements, and New Jersey offers matching grants for conservation projects.

What happens if the easement is violated near the end of its term? Public entities have little incentive to enforce deed restrictions if they are due to expire. Court proceedings could be initiated, but probably would be too lengthy, and the public may not support spending tax dollars to enforce an easement near the end of the agreement.

Term easement programs were developed primarily in response to farmers' qualms about the permanency of traditional conservation easements. But, since state and local PACE programs are chronically oversubscribed, programs that offer interim protection may not be necessary. For every farmer or rancher who is reluctant to commit to a permanent easement, others are eager to take the step.

Term easement programs were developed to address problems with valuing perpetual easements. Because compensation can be so thorny politically, interim restrictions do not solve valuation problems. Instead, PACE program managers should consider alternate approaches—such as a point system to calculate the value of permanent easements. Skagit County, Washington, and three Maryland counties have adopted point systems to pay landowners for protecting public values—productive soils, wildlife habitat, critical watersheds and scenic vistas—rather than for selling development potential.

Term easement programs are evolving. And while they won't solve the problems of PACE, when paired with benefits that support agriculture—such as tax relief, technical assistance in agricultural economic development or grants for conservation projects—they can dovetail with longer-term approaches to help sustain agriculture. 🚜

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