ADVANCING EQUITABLE AGRICULTURAL LAND TENURE:
Using Conservation and Financing Agreements to Share Ownership Rights

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"What we call land is an element of nature inextricably interwoven with man's institutions. To isolate it and form a market for it was perhaps the weirdest of all the undertakings of man".

Karl Polanyi, *The Great Transformation*, 1944

INTRODUCTION

This paper briefly reviews California's current agricultural land tenure, and surveys existing programs supporting farmers who have been systematically excluded from land ownership. Recognizing that it is essential to develop strategies that directly address the real estate market, this paper explores new efforts to directly address land ownership. Examining the strategy of buying land, restricting its use, and offering tenure to farmers, the report considers how land trusts, public agencies, investors and agricultural lenders could leverage their resources and expertise to increase equitable land tenure.

The earth as "real estate" rather than "our relation/part of us" is unique to the Western world view, economic system, language, and culture. Our current form of private land ownership is a European construct codified and governed by centuries of real estate law. The concept of land as a resource to be exploited is integral to the capitalist quest for endless economic growth.

Tenure is derived from the Latin word *tenere* meaning "to hold." Land tenure is the relationship that we have with land. The rules governing land tenure define the ways in which rights to land are allocated, transferred, used, or managed in a particular society.[1]

Private land ownership, the dominant land tenure model in the United States, provides a land owner with a bundle of rights that include the right of use (occupy, prevent entry, extract resources, lease) and disposition (pass down to heirs, sale, gift, transfer). The right to private ownership is deeply embedded in our law, politics and culture and is enforced by our federal and state constitutions and laws. Our counties, cities and local public agencies also impose zoning and other regulations. In California, Article XI of the California Constitution grants land use control to local governments.

Land
Cambridge Dictionary. Land is the surface of the earth that is not covered with water.
Investopedia. Land is real estate property without buildings and equipment that is designated by fixed spatial boundaries. In economics, land is a factor of production, along with capital and labor.

Real estate/ real property
Cambridge dictionary. Property in the form of land or buildings.
Investopedia. Land and permanently attached structures that someone owns.

References to "farmer" in the report includes any steward of the land whether an individual, Tribe legally formed entity, agrarian trust, or alternative ownership structure. This paper uses the term "priority farmer" to describe farmers and ranchers who suffer structural barriers that exclude them from land tenure, including, young and beginning, Black, Indigenous and People of Color, women and limited resource farmers and ranchers.

References to "conservation organizations" include Tribes, land trusts, nonprofits, public agencies and governments.

[1] https://www.land-links.org/what-is-land-tenure/

SCOPE AND METHODOLOGY

Scope

This paper examines agricultural land conservation and financing strategies to address inequities in land ownership. Using the Buy Protect Sell model, this report explores voluntary real estate agreements that govern future use and restrict resale. This paper explores legal restrictions on land ownership and does not address public land access policy initiatives like beginning farmer tax credits.[2] While this paper briefly touches on the valuation of land, challenging our current valuation system and exploring alternate methodologies is essential for advancing equitable access. The real estate agreements described in this paper are based on and work within our current legal system.

Methodology

The paper is based on a review of academic research, regional studies and interviews with conservation professionals, real estate appraisers and mission-based lenders and investors. California FarmLink (FarmLink) staff participated in the research and were wonderful thought partners. This report also benefits from the research, convening and draft recommendations of the California Agricultural Land Equity Task Force, as well as my participation in the technical Advisory Committee for the Task Force.

BACKGROUND

California's Agricultural Land Tenure

As we envision more equitable land tenure, let's briefly consider the historical roots of California's current system of land tenure, if only to acknowledge the magnitude of our task.

The European "founding fathers" of the United States imported centuries of English jurisprudence that defines land as an economic resource subject to individual ownership. Private land ownership is supported by a complex system of layered legal entitlements, financial incentives, public benefits, and cultural constraints. As European settlers moved across the continent, they rapidly replaced the Native relationships to the earth that had existed for millennia, and the nation was colonized through a series of land grabs benefiting white agrarian settlers and capitalist interests like the railroads. "Unsurprisingly, building a society on land taken by force is unlikely to lock in equitable outcomes"[3], and land use planning, real estate financing and access to public and private resources have systematically benefited European settler landowners.

California's land tenure has particularly traumatic historical roots. California land "ownership" was created through the forced removal and genocide of Native Californians. When the state was founded in 1850, millions of acres of agricultural land stewarded by Native tribes and Mexican rancheros were transformed into private property and transferred to European settlers. Since statehood, California immigration laws and exclusion acts have maintained a low-cost supply of farm labor while denying Black, Mexican, Chinese, Japanese and Native farmers land tenure. Even before statehood, large Spanish land grants provided the foundation for California's current system of large, corporate-owned farms that run on wage labor,[4] and the state continues to be dominated by large-scale agriculture. This form of land ownership has dictated an industrial mode of production. The "yeoman farmer" celebrated by Thomas Jefferson and Wendell Berry has never

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[2] Please see Vallient, O'Neil an Freedgood, *Bipartisan creation of US Land Access Policy Initiative*, 2024, Agricultural and Human Values

[3] Albertus, M. *Land Power: Who has it, who doesn't and how that determines the fate of societies*, 2024

[4] Kennedy, S., Frazier, C. *Land equity in California: Challenges and opportunities across the policy landscape*. 2024, Elementa

played a major role in California agriculture where the soil has been mined for food and profit since the Gold Rush.

Current conditions exacerbate the consolidation of land and wealth. California continues to lose farmland to suburban development, estate homes and environmental mandates like the Sustainable Groundwater Management Act.[5] Speculative investment in agricultural land by non-farming investors has driven up the price of land and accelerated consolidation of corporate farmland ownership. Interviews with Latino farmers on the Central Coast highlight the structural and social obstacles to land tenure, demonstrating the ways that "the search for farmland is imbued with power relations between tenants and landlords."[6]

We are in the midst of a great transition of agricultural land at a time of historic wealth inequality, a rapidly changing climate and global political uncertainty. The average age of California farmers is 59 years old, and 89% identify as white.[7] Seventy percent of United States agricultural land will change hands in the next twenty years. While the majority of this land will be passed down to heirs, many family farming operations do not have a next generation interested in continuing farming. The largest farmland owner in the nation today is Bill Gates.

Valuing Land

Our capitalist economic system dictates the way we value land. As Investopedia notes "land is a factor of production, along with capital and labor." Because our current system views land as a resource to be exploited for economic gain, we define the "highest and best use of land "as the <u>most profitable use</u> that is physically possible, legally permissible, and maximumly productive." [8]

Appraisers determine the "highest and best use" using three approaches: the sales approach, the cost approach and the income approach. These methodologies are used for determining the "fair market value" of agricultural land for sale, financing and conservation transactions. Unless the market places a monetary value on ecological, social and cultural benefits, those benefits are not reflected in the value.

Valuing land for its most profitable use is a major impediment to reforming land tenure, thwarting private, philanthropic, and public investments. To advance equitable agricultural land

Sales comparison approach compares the subject property with recent sales of properties that are similar in location, highest and best use, quality and acreage. **Cost approach** provides an indication of market value through the total of 1) the estimated value of the site or land with 2) an independent estimate of the replacement or reproduction costs of the improvements less depreciation. **Income approach** compares the property with other similar properties that have recently been leased or rented to provide an indication of an economic rent level. From the estimate of economic rent, potential annual income can be anticipated. This potential annual income is then reduced to an estimate of net operating income by subtracting the appropriate operating expenses. Capitalization of this net operating income provides an indication of market value by what is referred to as "direct capitalization."

[5] Experts estimate that one million acres of farmland will come out of productions because of limited groundwater resources. Vod, *State will pay some Valley farmers to fallow land in an attempt to save ground water.* Fresnoland (2023). Dairies are being removed from Point Reyes National Park to further environmental goals.
[6] Cato, *The Yeoman Myth: How Land Access Dilemmas Confound Beginning Farmer Aspirations.* 2019 UC Berkeley
[7] American Farmland Trust, *Investing in California Farmers to Protect our Food System* 2024 https://farmland.org/investing-in-california-farmers/
[8] Sheppard, H. *Valuation, Highest and Best Use, and Easements: New IRS Attacks*, 2022, Tax Notes Federal, Vol. 175, p. 1062 citing *Boom Co. v. Patterson* 98 US 403 (1878)

tenure and promote sustainable agriculture, we will need to consider other ways to value agricultural land beyond assigning value solely based on profit.[9]

While an appraiser determines the value of the land itself, the real cost includes the cost of capital, title and liability insurance, taxes, assessments and permits. Each of these costs provides a lever to bring down the cost of land to facilitate equitable land access. Land access policy initiatives like tax credits and current use assessments reduce the tax burden. Providing favorable financing terms for sustainable management and equitable tenure is another way to support ecological and social goals by reducing the real cost of land. While reducing the cost of land, these strategies do not change the ownership structure.

Supporting Priority Farmers

There has been a growing public awareness that the nation's farmers are growing older. States have adopted land access policy initiatives to incentivize equitable land transfer, and recruiting and training the next generation of farmers has been a focus of public, private and nonprofit investment.

Education, training, and technical assistance. In 2009, the United States Department of Agriculture (USDA) responded with the Beginning Farmer and Rancher Development Program (BFRDP) to provide education, training, outreach and mentoring programs to the next generation of farmers. In addition to training new farmers, the program has developed new training models and best practices. California organizations like the Agriculture and Land Based Training Association (ALBA) and FarmLink have participated in BFRDP, and FarmLink has developed comprehensive farmer business training. FarmLink also provides a land linking service to connect farmers with available land.

Commentators note that "knowledge deficit" interventions remain focused on improving individual business skills as a means of overcoming structural barriers. Critiquing the BFRDP, they conclude that, without structural attention to land redistribution and access, the ideal of the new farmers will remain a niche phenomenon. However, practitioners observe that that farmers need business skills to succeed on the land, noting that training "land and loan ready farmers" is an essential strategy.[10]

Equitable financing. Priority farmers continue to face systemic discrimination when seeking to access capital, and mission-based lenders and investors provide favorable financing for land and operations. As a Community Development Financing Institution (CDFI) FarmLink provides affordable agricultural land financing to underserved producers in California. [11] Organizations like the Black Farmer Fund, Foodshed Capital, People's Land Fund and Manzanita Capital Collective work with new and BIPOC farmers around the country to overcome financing barriers. However, accessible, affordable financing must be combined with efforts to overcome the market and cultural barriers to land access and tenure.

Reforming Agricultural Land Tenure

One commentator noted that, unless we reform land tenure, new farmers enter a "predatory, impenetrable land market that cannot be aligned with their production vision. "[12] There is a

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[9] Kay, K *Performing Developability: Generating threat and value in private conservation.* GeoForum (2021) and Lyddan, K. *Valuing Agricultural Conservation Easements and Enhancements.* (2024)

[10] Dirt Capital Partners, *Ten Year Impact Report 2014-2024.* 2024

[11] FarmLink *What is an Agricultural CDFI?* 2024

[12] Calo, A. *New entrant farming policy as predatory inclusion*, 2024 Agricultural and Human Values

growing awareness that overcoming the market forces that prevent equitable land tenure will require public policy, investment and new real estate tools that directly address land ownership.

However, private land ownership is a bedrock of economic, social and political power in the United States, embedded in our Constitution, legal system, economy and culture. Any reform will be met with powerful resistance from dominant interests. Nonetheless, examples of land reform in the Global North provide guidance and inspiration[13] and the affordable housing sector provides policy strategies and real estate tools that work within our current legal system.

Increased public awareness and resources

In 2024, the USDA Increasing Land, Capital, and Markets Access Program awarded $300 million to support land tenure projects. Based on a review of the awardees, it appears that many of the projects involve the purchase, leasing and/or ownership of land. While the program may provide us with valuable insights into the effectiveness of land-based interventions, its future is uncertain under the current administration.

The California Strategic Growth Council (SGC) Agricultural Land Equity Task Force, convened in 2023, has three full-time staff members engaged in research and facilitation. The Task Force of thirteen members represents Tribes, farmers, farmworkers, agricultural technical assistance providers, land trusts and public agencies. The enabling legislation mandates that the Task Force produce a report of recommendations by January 2026.

In 2023, the California Department of Conservation Sustainable Agricultural Land Conservation Program (SALC) awarded over $115 million in funding for planning, capacity building, conservation easement acquisition and fee title purchase. Last year the program went through an intensive equity review and recent awardees include land trusts, nonprofits, community groups and Tribes. SALC funds the purchase of permanent use restrictions that will survive future land transfers, assuring ongoing public benefits.

In 2024, California voters approved Proposition 4, a $10 billion climate bond. In addition to $15 million to the California Farmland Conservancy Program, $30 million is allocated to a revolving loan fund to protect farmland and improve land tenure for new and priority farmers. The program is being developed in consultation with the Agricultural Land Equity Task Force, the Department of Conservation and the California legislature and is scheduled to begin in 2026. [14]

California land trusts can play a crucial role in the equitable transfer of agricultural land. Conservation easements can restrict future use, ownership and resale value and, in some cases, remove farmland from the speculative market. The restrictions imposed by the easement can significantly reduce the land's market value. In an informal survey of land trusts attending the 2024 California Council of Land Trust conference, the majority of the respondents listed agricultural land access as a topic of interest for their organization. Two California organizations, Sonoma Ag + Open Space District and the Yolo Land Trust, are participating in the American Farmland Trust Land Transfer Navigator program.

[13] Calo, A *Background Information for the CA Ag Land Equity Task Force* (2025)

[14] At the time of this writing, the California legislature is considering Assembly Bill 524 (Farmland Access and Conservation for Thriving Community) to guide the development of the loan fund.

Purchase land, restrict use, and offer tenure to farmers

Our current ownership model provides the owner with the exclusive right to use and dispose of their land, and these rights are enforced by our federal, state and local governments. In an effort to reform agricultural land tenure, real estate agreements have been developed that intervene in different aspects of land ownership, transferring some of the rights in the bundle of ownership rights to another party.

Conservation organizations, lenders and investors have begun to (i) purchase land at market value, (ii) use voluntary agreements to restrict use and resale, and (iii) transfer tenure to a farmer. Essentially a series of real estate transactions, "Buy Protect Sell" can be implemented by one organization or by a collaborative of partners. The model is new in California, and we have limited examples. As pilot projects move forward and we gather more information, we will be able to identify barriers, develop new strategies, and build the partnerships we need to scale the model.

Buy Protect Sell Partners

A partner with capital who can act quickly to purchase at-risk land

A partner who can hold land permanently or temporarily

A land trust or other partner that can impose and enforce real estate restrictions

Lender to finance the "take out" purchase by farmers

Farmers that are loan and land ready

We know that available capital, organizational capacity and timing are significant barriers to Buy Protect Sell strategy. Often properties come on the market and are sold before priority farmers can develop business plans or assemble capital. It can take land trusts and public agencies years of fundraising, due diligence, and public process to purchase farmland. For example, while the SALC program funds fee title purchases, it can take two years to obtain funding. Wealthy estate home buyers and established farmers with immediately available capital are able to purchase the property immediately.

DISCUSSION

While Buy Protect Sell will not always be the solution, it is a powerful strategy that addresses land ownership. Conservation organizations, mission-based investors and agricultural lenders are in a unique position to work collaboratively on Buy Protect Sell transactions. This report examines innovations in Buy Protect Sell and considers how lenders and conservation organizations could leverage their respective expertise and capacity to contribute to each step of the process.

Purchase Farmland

Purchase to hold title permanently

Land trusts, public agencies, nonprofits and mission-based investors purchase farmland to provide tenure to priority farmers. These purchases, made to accomplish environmental and social goals, remove the land from the purely profit-driven market.

Some organizations continue to hold title to the land. For example, Living Lands Trust (LLT), formally Yggdrasil Land Foundation, receives gifts of land and buildings to provide long-term equity-sharing leases to farmers. LLT prioritizes projects that align with their commitment to biodynamics and regenerative land stewardship. Local land trusts hold conservation easements on LLT land providing added assurance that these places will remain protected. Because of LLT's model, its land holdings are modest with nine properties, including Filigreen Farm in Mendocino County.

Agrarian Trust uses another ownership model, creating Agrarian Commons to own the land. The Commons, which are governed by a board of farmers and community members, provide affordable leases to farmers. There are seven Agrarian Commons being developed with this unique ownership model. Other innovative collective ownership structures are being developed by the People's Land Fund, the Sustainable Economies Law Center, the Center for Ethical Land Transition and others.

Purchase for interim ownership

Other land access advocates are committed to farmer ownership, and they purchase land, restrict its use and transfer tenure to farmers through sale or a lease with an option to purchase.

Conservation Fund's Farms Fund (FF). The Conservation Fund is a Land Trust Alliance (LTA) accredited land trust with a revolving loan fund that funds environmental and forestry projects. The fund loaned more than $256 million over the past thirty years.

In 2021, Conservation Fund established the Farm Fund to buy small to mid-sized farms at risk of being lost to development. The land is matched with next-generation farmers who can lease the property for three to five years with an exclusive option to purchase. The FF applies for state and federal easement funding, and a conservation easement is recorded on the land. Participating farmers become part of a marketing network with institutional customers contracts. Investment in one farm rolls forward into new projects every three to five years. The FF seeks to focus on agricultural regions with strong local food markets and a pipeline of underserved farmers. The program focuses on finding appropriate land for farmers, rather than purchasing available farmland when it comes on the market. To date, FF has programs in Georgia, North Carolina, and Illinois.

Dirt Capital Partners (DCP) purchases farmland and provides farmers with long-term leases customized to the farmer's projected cash flow. The leases includes a purchase option at a pre-agreed time and price. This strategy allows farmers to secure land without providing a down payment and establishes a clear financial objective. DCP raises capital from a mix of investors including individuals, family offices and foundations. Their goal is always to transfer land to farmers and exit the project.

Like the Conservation Fund, DCP centers its work on the farmer. Before investing in land, DCP must have a farmer ready to farm the property. Often DCP purchases land to expand an existing operation or facilitate the purchase of land a farmer is already leasing. Otherwise, DCP will work with farmers until an appropriate property is identified. DCP focuses on farmer readiness to ensure that the farmers that they work with are "land and loan ready" when they purchase the property. While owning the land, DCP partners with local land trusts to restrict future use with a conservation easement. DCP has completed forty-six projects.

Over the past ten years, DCP has identified several primary themes. First, it's important to provide creative and flexible financing solutions tailored to the specific needs of each farmer. DCPs works collaboratively with other capital providers to bring diverse skills and capital to a project. Secondly, DCP recognizes that capital is only one of the challenges facing farmers. Farmers also need holistic support for business planning and technical assistance. Finally, DCP recognizes the importance of a continuingly evolving impact assessment processes. DCP evaluates their projects based on ecological stewardship, farmer equity, community building and field building. [15]

Land trusts and public agencies. Land trusts, public agencies and nonprofits also purchase or accept gifts of farmland. In some cases, like Watsonville Slough Farm, the land trust retains title to the

[15] Dirt Capital Partners, *Ten Year Impact Report 2014-2024.* 2024

land. The Land Trust of Santa Cruz County manages the agricultural operations and leasing land to farmers while also providing community programs and public access. Lease payments on a farm can provide a conservation organization with sufficient funding to support the staff needed to manage the farm ownership.

In other cases, the conservation organization may be prohibited from holding land. For example. The Sonoma Agricultural Preservation and Open Space District (Ag + Open Space), which has launched a new Farmland for All Buy Protect Sell program, is prohibited from long-term land ownership. The district will be transferring title to farmers through a request for proposal process. The district, which held a farm financing workshop in February 2025, is currently accepting farmers' applications and identifying appropriate land.

Organizations that rely on gifts or public funding move slowly and tend to operate on a limited scale. Consequently, land is often lost because there is no organization with capital ready to move forward in a competitive market. However, there are exceptions. Ag + Open Space, which receives a quarter-cent Sonoma County sales tax, has revenues of over $30 million a year. Land trusts like the Peninsula Open Space Trust (POST) and the Marin Agricultural Land Trust (MALT) also have significant acquisition funds available. There's a tremendous opportunity for organizations with access to capital to increase the scale and impact of their work.

Restrict the Use of Land

To further the public good, the government can exercise its police power to limit how an individual can use their land. Our federal, state and local governments impose mandatory land use, zoning and environmental regulations. Land owners can also voluntarily limit or share their ownership rights by contracting with their neighbors, business partners, and lenders. While neither state regulation nor private contracts create a permanent restrictions, voluntary conservation easement agreements can limit ownership rights in perpetuity.

Permanent use restrictions: conservation easements

A conservation easement is a voluntary negotiated agreement between a private landowner and a conservation organization to permanently protect the land's conservation values by limiting its current and future use. Traditional agricultural conservation easements prohibit the conversion of the land to non-agricultural uses. Once the easement is recorded, the entity holding the easement has a legal interest in the property in perpetuity, together with an obligation to monitor and defend the easement terms. California Civil Code Section 815.2 requires that all California conservation easements "run with the land" in perpetuity, binding future owners to the terms of the agreement.

Land trusts and public agencies purchase and receive donations of conservation easements, committing to enforce the terms of the easements in perpetuity. Land Trust Alliance (LTA) Standards and Practices require annual easement monitoring, and most land trusts maintain endowments to fund future easement stewardship. Terra Firma provides land trusts with easement legal defense insurance. The LTA Standards and Practices govern land trust governance, operations, real estate transactions and easement stewardship, and many land trusts are accredited by LTA. Because many landowners donate easements and seek charitable donations, the Internal Revenue Service regulates donative easement transactions. There's a significant body of conservation easement case law, as well a national community of attorneys advising conservation organizations.

Conservation easements require monitoring and enforcement in perpetuity and accredited land trusts and public agencies are usually the most appropriate entities to hold and steward conservation easements. When financing land encumbered by a conservation easement, it's essential that the purchaser and lender review the easement to determine whether it impacts agricultural production, farming practices, residential development or resale.

Enhanced Use Restrictions in Conservation Easements
Using the traditional agricultural conservation easement as a base, some conservation organizations add "enhanced" provisions to accomplish conservation goals that go beyond avoided conversion. Easements can contain use restrictions limiting home size, mandating that the land remain in agriculture and establishing environmental protections that permanently restrict the owners right to use the property.

Environmental covenants. Perhaps the most common easement enhancements protect environmental resources. Many rangeland easements limit planting of orchards and vineyards to protect biodiversity, including Swainson's Hawk habitat. Riparian protection and restoration are important conservation goals for many organizations, and agricultural conservation easements often include creek conservation areas with grazing restrictions and fencing requirements.

Affirmative covenants: mandatory agricultural use. Some organizations include affirmative covenants requiring that the landowner continue agricultural use of the property in perpetuity. While a traditional conservation easement describes what the landowner *may not* do, the mandatory agricultural use (MAU) provision dictates what the landowner *must* do. The easement language governs how agriculture is defined and remedies for noncompliance. A carefully drafted easement ties the MAU to the agricultural resources of the property, which may change over time. MAU provisions are often tied to an agricultural management plan that can be reviewed and revised as ownership or conditions change. MAU provisions significantly increase an organization's stewardship obligations, often requiring that the conservation organization find a lessee if the land falls out of production.

Marin Agricultural Land Trust has used a MAU provision since 2012. However, MALT has found that in scenic Marin County, wealthy purchasers with a commitment to local, sustainable agriculture purchase MAU-encumbered land and lease the land to farmers and ranchers. Consequently, while the land remains in production, the MAU provision does not ensure that agricultural producers own the land or have secure land tenure.

Residential restrictions. Many conservation easements restrict residential development, usually limiting the size of any residence to 2,500 to 3,000 square feet. Restricting home size can significantly reduce a property's value, especially on land subject to estate home pressures. Some land trusts restrict residency on agricultural land to farm operators and workers, requiring that the property's residents are actively engaged in farming the property. Monitoring and enforcing residency requirements also increase stewardship and can create difficult relocation issues. The use of residency requirements in conservation easements highlights the synergies between agricultural conservation, affordable housing and farmworker housing.

Valuing Conservation Easements
When granting a conservation easement, the owner donates or sells some of the rights in their bundle of ownership rights. Each of those rights has a market value and the value of the conservation easement is equal to the market value of the rights relinquished. Each conservation easement is valued by an appraiser using the "sales approach" that compares a subject property with similar properties that have sold recently. By analyzing a subject property's attributes and comparing it to similar properties that have sold, the appraiser arrives at an opinion of the

property's market value. Differences between the properties are adjusted and the present value is calculated to adjust for time of sale.

Because conservation easements are not sold in the marketplace, there is no record of market sales for a meaningful comparison. Consequently, to determine the easement value, the appraiser determines the fair market value of the property twice: (1) once without easement restrictions ("before" value) and (2) again with easement restrictions ("after" value). The value of the conservation easement is the delta between the two: The loss in value caused by the restrictions as determined by the real estate market.

When the highest and best use (most economically profitable) of agricultural land is development into rural estates, suburban housing, mining, or other nonagricultural uses, the real estate market will devalue a property encumbered by an easement restricting those uses. Unless the market places a monetary value on ecological, social, and cultural benefits, those benefits are not reflected in the fair market value. "In other words, the "highest and best use" of land from the perspective of capital accumulation are not necessarily the highest and best uses from the perspective of environmental sustainability or economic justice."[16]

While traditional conservation easements usually limit future use, often reducing market value, they do not remove land from the real estate market. The appraiser calculates economic diminution value based on comparable market sales. Both the fair market value of the property and the value of the easement are dictated by the real estate market. If the easement doesn't restrict the highest and best economic use of the property, the market will not discount the price.

Consequently, if the property's highest and best use of the land is agriculture in both the "before" and "after" condition, the easement will not diminish the value. For example, the highest and best uses of land in some wine appellations in Sonoma and Napa is planting vineyards, and unless the easement restricts vineyard development, the easement won't have value. During the almond boom, the agricultural real estate market didn't discount orchard land encumbered by traditional easements because the easements didn't restrict the highest and best use – almond orchards. In Marin County, wealthy estate purchasers are often pleased to own MALT-protected ranch and do not discount the purchase price because of a MALT easement.

Additionally, in regions with small agricultural parcel size, estate home buyers drive up the value of small parcels far beyond agricultural value. If there's an existing home, these parcels are often fully developed and will have very little easement value under the current appraisal methodology. One of the challenges for farmland access programs is that the small parcels with housing that are highly sought after by priority farmers have low conservation easement value.

Conceptually, commentators note "the irrationality of protecting species, habitat, and open space through the process of having to substantiate their immediate disappearance," and have observed the need to "reconsider the norms of valuing private land conservation, which, at the present, is first and foremost, understood as potential housing, developments, mines and shopping malls." [17] Often the market value of a conservation easement largely depends on location: Is the property in the path of development?

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[16] Fairbairn, M. *Fields of Gold: Financing the Global Land Rush*, 2020

[17] Kay, *Performing Developability: Generating threat and value in private land conservation*, 2022, GeoForum, 128, p. 43

Temporary use restrictions
Generally, conservation organizations do not acquire temporary use restrictions, and the California conservation easement enabling statute require perpetual conservation easements. However, there are public programs that offer financial incentives for temporary restrictions. For example, the California Land Conservation Act of 1965 (Williamson Act) offers property tax reductions to landowners who agree to keep their property in agriculture for ten or twenty years. Iowa, Idaho and other state offer financial incentives for term agreements to manage agricultural land.[18] The USDA Conservation Reserve Program (CRP) compensates farmers with ten to fifteen-year contracts to enhance soil health.

When financing the purchase of agricultural land, borrower agrees to temporarily restrict their ownership rights, sharing some rights with the lender during the term of the loan. These restrictions are contained in a deed of trust and security agreements. For example, financing documents contain non-monetary use requirements that require that a borrower continue their agricultural operations, creating term MAU requirements. Security agreements require that borrowers maintain crops and livestock and market the property's agricultural products. If the borrower fails to do so, the lender has the right to enter the property to protect the crops and livestock that provide collateral for the loan. Financing documents also mandate maintenance of the property and restrict the use of property as collateral for additional loans.

Agricultural land lenders could consider including use restrictions that restrict non-agricultural development, limit the residential use to farmers or impose environmental stewardship requirements, essentially creating term deed restrictions. It's important to note that added use restrictions create additional loan servicing responsibilities and all innovative financing terms should be reviewed by legal counsel.

Working with a conservation organization, a lender could design financing documents with non-monetary covenants that work synergistically with the conservation organization's permanent restrictions. Additionally, it may be possible for a lender to temporarily protect the property while the land trust seeks funding for permanent protections. Any agreement would require clear definition of the respective stewardship responsibilities of the lender and the land trust. As lenders and their partners develop non-monetary covenants, they have the opportunity to create new ways to compensate agricultural property owners for providing equitable land transfer and ecological stewardship.

Restrict Resale of Land
Restrictions on future purchaser
Conservation easements and financing documents can also contain resale restrictions that limit the owner's right to dispose of the land. A right of first refusal (ROFR) is a common resale restriction that gives a designated party the opportunity to buy a property before it is put on the open market. If the party declines the opportunity, the property is then made available to the public. A ROFR can be imposed by real estate agreements or by legislation and the ROFR can be held by a lessee, lender, land trust, nonprofit or government.

ROFRs are commonly used in agricultural land transactions to facilitate succession planning, give preference to a farm tenant, or provide a neighboring farmer with the chance to buy adjacent

[18] Vallient, O'Neil an Freedgood, *Bipartisan creation of US Land Access Policy Initiative*, 2024, Agricultural and Human Values

land. Some states mandate a ROFR in agricultural land sales. In Iowa, a grantor must give the mortgagor the right of first refusal to purchase agricultural land. Minnesota requires that sellers make a good faith effort to offer agricultural land for sale or lease to the immediately preceding farmer at a price no higher than the highest price offered by a third-party buyer. [19] ROFR clauses may include a pre-determined sale price or a methodology for determining the price, giving the ROFR holder the opportunity to match a third-party offer, purchase at price determined by an inflationary index or, in some cases, purchase at "agricultural value."

State law interpretation of the "rule against perpetuities" dictates the legal terms of a right of first refusal or an option to purchase. For example, Washington law limits a right of first refusal to ten years, and the Washington Farmland Trust includes a ten-year ROFR in some of their easements.

Land trusts. For decades, conservation easements in Massachusetts, Vermont and Maine have included "option to purchase at agricultural value" (OPAV) provisions that require that the land be sold to a qualified farmer. When the property goes on the market, the land trust has the right to approve the purchaser. If the land trust determines that the proposed purchaser is not a "qualified farmer," the easement holder may exercise its right to purchase the land at "agricultural value." The definition of "qualified farmer" often requires that the purchaser earn fifty percent of their income and spend fifty percent of their time farming. When the conservation organization is exercising its option, the "agricultural value" is usually determined by an appraisal or an inflationary index.

What is Agricultural Value?
Land trusts determine "agricultural value" when exercising options under an OPAV provisions, and when there are resale restrictions require that land sell at agricultural value.

Most of the organizations interviewed determine agricultural value with (ii) the "before and after comparable sales" methodology or (ii) an inflationary index.

Colorado Cattlemen's Agricultural Land Trust has begun to define agricultural value based on agricultural production revenues.

In some cases, the conservation organization never actually purchases or holds title to the land but instead the land transfers directly to a qualified farmer. The Massachusetts Department of Agricultural Resources (MDAR), which is prohibited from owning land, holds over six hundred OPAV easements. When MDAR exercises its option, it arranges for the sale of the land directly to a qualified farmer through a request for proposal process. Organizations using the OPAV can waive their option when beginning farmers can't meet the technical definition of qualified farmer.

While OPAV provisions restrict future purchasers, not all OPAV provisions contain resale price restrictions, and the future sales price is determined by the qualified buyer and the seller. While OPAV easements keep land in the hands of farmers, they don't remove land from the market and some studies note that the OPAV doesn't always keep the land affordable for beginning farmers. [20]

Affordable housing. Affordable housing relies on ROFRs to address inequities in the housing market, ensure continued affordability and prevent displacement. The National Housing Trust is working with state and local housing financing agencies to strengthen nonprofits' right to exercise ROFR provisions that ensure that the benefits of the federal housing programs survive resale.

[19] Iowa Code 654.16A and MN Code 500.245

[20] Wagner, B., Ruhf, K., *Does Option to Purchase at Agricultural Value Protect Farmland for Beginning Farmers?* 2013, Land for Good.

Legislative initiatives. Some cities struggling with an affordable housing crisis have adopted local legislation that provides a ROFR to qualified affordable housing nonprofits. In 2019 San Francisco adopted the Community Opportunity Purchase Act (COPA) to extend a "right of first offer and first refusal" to qualified nonprofits for all residential buildings with three or more units. The purpose of COPA was to give affordable housing nonprofits the ability to match offers on multifamily residential buildings. Commentators found that successful COPA programs require nonprofits with organizational capacity, immediately available funding, and sufficient time to make an offer and complete transactions. [21]

In a recent article in the Sustainable Development Code, the authors suggest that the ROFR on agricultural land should be extended to Agrarian Trust and other nonprofits with the mission of providing low-income and BIPOC farmers access to land. [22] Agricultural conservationists can learn from the COPA experience by building capacity, increasing immediate sources of funding and streamlining processes.

Land financing documents. ROFRs are commonly used in agricultural land sales, farmland conservation and affordable housing and they could be an excellent tool for mission-based lenders. An ROFR in financing documents would govern the first sale and give a lender the opportunity to purchase land that is in foreclosure or for sale. It's possible that the lender would never actually take title to the land but would find and finance a qualified purchaser through a well-crafted request for proposal process. For mission-based lenders and agricultural CDFIs, a ROFR ensures that the public benefit conferred by their favorable lending survives the subsequent sale. Land linking services and beginning farmer training programs supply land-and-loan-ready farmers creating synergies for organizations like FarmLink. While further analysis is necessary, ROFRs are a promising real estate financing tool to advance equitable land access.

Restrictions on resale price

The resale price of land can be contractually restricted in a conservation easement, covenant, deed of trust or mortgage. Some organizations include resale price restrictions in conservation easements to keep land affordable for farmers. The resale price can be based on an inflationary index or can require that future sales be at "agricultural value." Land trusts and land access advocates are beginning to consider whether agricultural value should be based on the land's agricultural production rather than the market. When resale restrictions are contained in the conservation easement, the restriction runs with the land in perpetuity, permanently removing the land from the speculative market.

Affordable housing financing documents often contain income-based resale restrictions imposed by housing nonprofits and state and local governments. The restrictions, contained in a deed of trust, run with the property, and restrict the sales price for a number of years or in perpetuity. A resale formula establishes an upper limit on the price and preserves affordability over time. Priority farmers need affordable places to live, and farmland access is inherently tied to affordable housing. As agricultural conservationists seek qualified buyers, restrict resale prices, and explore new ownership structures, our interests increasingly intersect with our affordable housing and community land trust colleagues.[23]

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[21] Enterprise, *A Golden Opportunity Could Reshape California's Pursuit of Affordable Housing.*

[22] Michaels, M. *Agrarian Trusts and the Right of First Refusal.* Sustainable Development Code, Chapter 6.2

[23] Michels, Hindin, *Building Collaboration among Community Land Trusts Providing Affordable Housing and Conservation Land Trusts Protecting Land for Ecological Value,* Lincoln Land Institute of Land Policy, 2023.

Real estate financing. Without a conservation easement, a lender's financing documents will restrict the price of the first resale. Resale restrictions require active stewardship, and the lender would need the willingness and capacity to enforce the restriction. Lenders could also encourage land trusts and public agency partners to include resale price restrictions in conservation easements by offering financing incentives to purchasers of for agricultural properties with resale restrictions. This is an example of how more coordinated collaboration with land trusts could increase land access for priority producers.

Valuing resale restrictions
Whether the land will remain in the hands of priority farmers when the property changes ownership depends on whether appropriate resale restrictions are in place. Our limited experience in California has demonstrated the power of resale restrictions to reduce land values. In scenic areas with intense estate home pressure, a combination of residential use restrictions and an ROFR can reduce land values by as much as seventy-percent. There is still work to do to develop the most effective ways for lenders to compensate borrowers for non-monetary use and resale restrictions in financing documents. There may be opportunities for lenders to develop financial incentives that provide farmers with ongoing compensation to augment the one-time conservation easement payment.

Wealth Building and Removing Land from the Speculative Market
Land ownership is a primary way for farmers to accumulate wealth, transfer assets to heirs and fund retirement. Limiting agricultural land value with conservation easements, or removing the land from the speculative market entirely, eliminates the opportunity for current and future generations of farmers to build wealth through land appreciation.

East Coast conservationists who have been using OPAV and resale restrictions for decades advocate for the creation of farmer retirement plans to mitigate the elimination of land-based wealth building. When using agreements that limit and appreciation, conservation organizations and mission-based lenders and investors must carefully consider the tension between wealth building and lowering land values by removing the land from the market. Affordable housing advocates also grapple with this tension and may provide valuable insights.

CONCLUSION
We are navigating a historic transition of agricultural land at a time of historic wealth inequality, a rapidly changing climate and global political uncertainty. While land access public initiatives reduce the cost of owning land and training and technical assistance programs improve individual business skills, overcoming the market forces that prevent equitable land transfer will require additional public policy and investment. Effective advocacy and the immediacy of the crisis have focused our attention on agricultural land markets, ownership and valuation.

California's current land tenure is supported by a complex system of legal entitlements, financial incentives, public benefits and cultural constraints. Addressing equitable transition and tenure within our current legal system will require multi-faceted interventions with many partners, each contributing unique skills and tools. Some states have enacted land access policy initiatives that provide tax credits and low interest loans. There's a history of public and nonprofit technical advisory services. Mission-based lenders and investors provide favorable financing. Land trusts can reduce land values with conservation easements that restrict future use and, in some cases, remove farmland from the speculative market.

Overcoming market barriers will require close collaboration and it will be most effective for land trusts, lenders and other participants to clearly identify resources, expertise, roles and responsibilities. Lenders could consider expanding the non-monetary covenants in financing documents. ROFR's are widely used and could provide lenders with a mechanism to ensure that the land they're financing is sold to qualified farmers, extending the public benefit of their funding. Conservation organizations could expand their participation in Buy Protect Sell transactions. Mission-based agricultural land lenders, investors and land trusts could work together to create a synergistic, comprehensive set of term and permanent restrictions.

Developing and implementing these new tools will require capital, organizational capacity and time. As we design new land tenure tools, initiatives like the California Agricultural Land Equity Task Force and the equity-focused SALC program will provide valuable insights to guide future innovation.

All conservation easements are appraised. However, California appraisers lack experience with easement enhancements, and unique nature of California's agricultural land can create a significant margin of error. Appraisers, conservation organizations, lenders and investors can work together to create consistent, efficient and defensible valuation methodologies for conservation and financing covenants. Ongoing financial incentives for nonmonetary covenants, combined with public land access policy incentives, may alleviate the wealth building limitations of use and resale restrictions.

Before proceeding with voluntary agreements that limit private land ownership, participants should engage in a careful analysis of the long-term implications for farmer wealth building, retirement and inheritance. It is essential to engage in frank, transparent conversations with land owners and purchasers, and agreements should include appropriate disclosure about the impact of the restrictions. The responsible use of these agreements includes an obligation to develop ongoing financial incentives and alternative wealth building mechanisms for priority farmers.

ATTACHMENT A
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