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PAPERS

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This Wild Farm Alliance Briefing Paper is part of a series that explores many of the issues that define and distinguish the concept of farming with the wild. Each paper focuses on a particular issue set in the context of reconnecting food systems with ecosystems. We are striving to bridge the gap between stewardship farming and wildlands conservation. To obtain other papers in this series, or to learn more about our programs, contact the Wild Farm Alliance.

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Farming With The Wild Forever

Using Agricultural Easements to Support Biodiversity

Throughout the nation, the livelihood of farmers who care about the ecological landscape in which they live and work is increasingly threatened by a food system that values immediate gains over good stewardship. All too often, these farmers succumb to the forces of development sprawl, escalating taxes, declines in profitability, and economic globalization — resulting in a cascade of negative impacts on families and communities, and upon the land itself. This disturbing trend has led many people to explore the concept of using a legal tool known as a *conservation easement* to help fight the loss of our agricultural heritage, while also meeting a range of public and private land conservation goals.

Extensive information is readily available — from attorneys, tax advisors, government employees, land trusts, and publications — to guide interested persons through the technical requirements of developing and administering conservation easements designed to prevent subdivision, development, and changes in the use of agricultural lands. This briefing paper covers new ground, focusing specifically on ways to support biodiversity on farms and ranches, and in the surrounding landscape, by using conservation easements designed to promote and sustain active management of land for various agricultural purposes compatible with wild nature.

Agreements that Support People and the Land

What are Conservation Easements?

A conservation easement is a voluntary legal agreement between a landowner and a qualified organization or government entity. It restricts future activities on the land in order to protect specific ecological, scenic, recreational, historic, agricultural, or forestry values that provide long-term public benefits. In return, virtually all easements can enable landowners to receive public subsidies such as direct payments, federal tax deductions, estate tax reductions, and possibly state and local tax considerations. The easement holder is responsible for monitoring and enforcing its terms to ensure compliance. Easements are individually crafted to reflect goals of the landowner and easement holder, and to meet criteria related to various statutes and regulations. Because an easement is legally recorded and is attached to the deed, future landowners must conform to its terms in perpetuity. Private lands protected by conservation easements stay on the tax rolls and remain privately owned and managed.

Biodiversity on Agricultural Land: A Major Concern

Two thirds of the continental U.S. land base is used for agricultural purposes, with 50% of that land in private ownership. At the same time, two-thirds of the threatened and endangered species in the U.S. have greater than 60% of their known habitat on non-federal land, and over one-third depend entirely on private land. Unfortunately, agriculture-related biodiversity problems are not limited to the United States. The authors of a 2005 British study concluded that during the next 50 years, global expansion of agriculture threatens to adversely affect worldwide biodiversity on a scale that may rival climate change in significance.

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The majority of the nation's threatened and endangered species, like this bog turtle, occur on private land. Agricultural easements can play an important role in helping to conserve their habitat.

What are Agricultural Easements?

In its simplest and most common form, an agricultural easement removes most, if not all, development rights from the land, and prohibits land uses that would interfere with a continuation of viable agricultural enterprises. While such restrictions are important, they ultimately may protect the land only from being fragmented or developed; an easement cannot realistically ensure the continuation of agriculture. Additional easement language normally is required to address other landscape qualities and values worthy of protection over the long term.

Agricultural easements are not intended to be an exhaustive list of dos and don'ts, but are written to establish specific conservation purposes and define uses that reflect those values. They are typically written to give special attention to providing landowners with the flexibility to change and adapt farming or ranching practices as future conditions require. If a question arises regarding whether an activity is permitted or not, clarification usually can be gained by following a procedure spelled out in the easement. Many easements require the development and implementation of an approved management plan, prepared by a qualified professional and meeting a specific set of standards, such as a Natural Resources Conservation Service (NRCS) farm plan. In the end, easement purposes and provisions ensure that protections for essential values are well defined, and can be readily monitored and enforced.

How Agricultural Easements Can Work for You and the Environment

A conservation easement is generally viewed as a blunt tool, best suited to "zoning the land" by defining permitted and prohibited land uses, and activities that are readily monitored and enforced. Easements are not generally good vehicles for including excessive management detail. With so many variables in agricultural business and in the natural environment, it is inadvisable to narrowly prescribe management in perpetuity. Piling on management detail also increases stewardship responsibilities in the future, and may make easements more difficult to monitor and enforce. It is important to balance provisions for sound conservation with the landowner's need for flexibility, to ensure long-term economic viability. Easement provisions should be essential to the conservation purpose, clearly measurable, and easy to monitor and appraise. Where there is a need or desire to address detailed management issues, the easement can be tied to a certification standard or to a separate document (management plan) that can evolve or be amended outside the recorded easement.

Getting Started:
Implementing a Step-By-Step Process that Works for the Landowner and the Land

After you have investigated the pros and cons of agricultural easements, and have decided to implement this conservation tool, it is helpful for both the landowner and potential easement holder to follow a step-by-step process to achieve the best results.

- First, decide on the primary purposes of the easement.
- Next, assess biodiversity values to be protected.
- Then, determine whether management areas are necessary or advisable. The easement can be designed to cover the entire property equally, or to designate certain areas to receive special treatment or even be excluded.
- Finally, consider uses and prohibitions, and the benefit of management plans. Decide which uses should be permitted, and if a separate management plan is needed.

1. Decide on Primary Purposes of the Easement

The stated purposes of the easement are guiding elements for evaluating new ideas, as well as preventing activities detrimental or inconsistent with the overall goals of the easement. Although the central purpose of most agricultural easements is protecting land for productive agriculture and helping to assure future economic viability, multiple goals can be served — including protecting natural area and open space values such as biodiversity, scenic or recreational amenities, water resources, and historic attributes. Agriculture-related and conservation purposes can go hand-in-hand, each serving legitimate public benefits.

Give thoughtful consideration to drafting easement purposes that will provide public benefits commensurate with public subsidies received through the easement process. Bear in mind that easements are structured to run with the land in perpetuity; a time may come when agricultural enterprises are no longer feasible on the land in question. On the other hand, protection of open space values, such as the conservation of biodiversity, is likely to provide public benefits forever. Including such long-term public benefits in an agricultural easement makes that document more likely to meet the increasing demands of governmental entities that normally review the quality and acceptability of easements. When an easement identifies more than one conservation purpose for the same area of land, it may be necessary to specify which purpose is primary, to help avoid potential conflicts or resolve any that might arise.

2. Assess the Land for Biodiversity Values

When considering an agricultural easement, the landowner and easement holder have an opportunity and obligation to assess the land for conservation values warranting special protection. The assessment should incorporate expertise from both conservation organizations and public agencies, to ensure that the most current information and science are applied.

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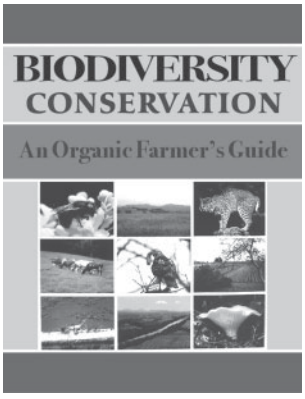
Conversion of natural habitats into cropland, pastures, hayfields, and grazing land has taken an enormous toll on our native ecosystems and on the plants and animals that depend upon them to survive. However, by adopting an appropriate set of land management strategies — such as those outlined in this and other Wild Farm Alliance briefing papers and in additional recommended publications — farmers and ranchers can minimize adverse environmental effects of their operations. By "farming with the wild," agricultural lands can: provide habitats for native species; allow ecosystems to function normally; support critical services such as clean water, flood control, and nutrient cycling; and maintain wildlife corridors that provide linkages with habitats in surrounding areas. In fact, the basic ability of some native species and ecosystems to survive will depend on landowners who consistently and thoughtfully meet those species' needs on "working" agricultural landscapes. Agricultural easements can help to implement and perpetuate management practices that conserve biodiversity, while restricting potentially damaging practices and land uses.

When crafting easement language, sound science and reasoning were used at Triple M Ranch to define permitted and prohibited actions along with their costs and benefits. Pertinent questions were asked, such as: Does the action address priority conservation concerns? Is it going to matter, and, if so, how much? How easy will it be to monitor compliance?



Whether or not organic certification is deemed to be an appropriate requirement of an agricultural easement, protection and enhancement of biodiversity on the farm or ranch can be achieved by following recommendations contained in the Wild Farm Alliance publication, "Biodiversity Conservation: An Organic Farmer's Guide." This guide offers valuable input for designing biodiversity-related easement provisions on both organic and non-organic farms.

Biodiversity aspects to recognize include:

- Wetlands, lakes, ponds, and riverine areas (green corridors by waterways);
- Natural areas and native plant communities, such as woodlands, native prairies, and unique geologic features;
- Habitats of threatened, endangered, or sensitive species, or other plants and animals with a high priority for protection.

Additional considerations:

- Allowance for a continuation of normal ecosystem processes including periodic flooding and inundation, natural fire regimes, nutrient cycling, and succession from one habitat or community to another (such as from a wetland to a wet meadow, or from an abandoned field to a forest);
- Opportunities to restore important habitats such as wetlands or grasslands that have been lost or degraded;
- Opportunities to re-knit habitat connectivity and protect wildways as travel corridors for wide-ranging wildlife and contiguous habitats for plants.

3. Determine Whether Separate Management Areas are Necessary or Advisable

Easements may apply to an entire tract of land or to specific parts of a property. Depending on the various goals for cultivated, grazed, lived-in, and natural areas, it may make sense to draft an easement that treats these areas differently. In some cases, intensively used portions of the farm or ranch (such as around buildings) may be excluded from the easement to increase flexibility, rather than burdening the document with excessive restrictions and exceptions. The landowner must be able to work with an agency or organization whose goals, funding, and expertise allows the group to acquire and manage an easement designed to protect both agricultural land and open-space natural resources. If not, then two organizations may partner to hold and to administer easements on specific portions of the land — thereby providing expertise to help draft easement language and take responsibility for the provisions that protect these separate values. Note, however, that the more intensive uses of portions of a farm should not conflict with the stronger protections afforded the land under easement.

4. Consider Benefits of Third-Party Certification or Approved Management Plans

Agricultural easements often require management to be keyed to a third-party certification program such as that offered through the USDA National Organic Program (NOP), or to an approved whole-farm planning process such as the one conducted under the auspices of the NRCS. By taking this direction, farm and ranch managers are able to work with experts who can combine up-to-date agricultural knowledge with the easement's goals, thereby offering management flexibility and simplifying the language of the easement itself. In addition, this approach can free the easement grantee from certain monitoring duties that will demand expert attention throughout the years.

Farming with the Wild – Biodiversity Friendly Actions

The following are examples of actions to consider for incorporation in an agricultural easement to benefit biodiversity conservation. By no means a complete list, it is provided to stimulate thinking and discussion between landowners and potential easement holders. Prohibited and permitted activities should be well-defined, and the areas where those activities apply must be identifiable and clearly delineated within the easement. Once activities are identified, persons with the appropriate expertise must develop specific easement language.

Sensitive Lands & Habitats

- Protect the qualities and ecological function of sensitive lands and habitats including: natural areas, native plant communities, threatened and endangered species habitat, wildlife corridors, and habitat linkages.
- Prohibit the degradation of sensitive lands or their conversion to other uses.
- Prohibit major alteration of landforms that would result from grading, filling, or excavating topsoil, earth, and rock.

Species of Concern

- Protect threatened, endangered, and other priority native species and their habitats; define the species of concern and ensure that both parties have a common understanding of the ways in which agricultural activities could adversely affect them.

Soil Quality

- Prohibit the degradation of soil resources.
- Retire and restore lands that are steep or prone to erosion.

Habitat Restoration

- Define where and how habitat restoration (including the use of fire if appropriate) may be implemented, either by the easement holder or as mutually agreed upon by the landowner and easement holder.
- Retire and restore land essential to providing or enhancing high priority riparian buffers, wetlands, native habitats, and wildlife corridors.

Riparian Areas

- Protect riparian corridors of sufficient width to meet the needs of priority species identified in the baseline documentation process.
- Prohibit removal or destruction of riparian vegetation, except when authorized by the easement holder and when necessary for the purposes of enhancing wildlife habitat.
- Protect riparian vegetation and the ecological functions it performs, by prohibiting construction of any structure or impervious surfaces (including paving or roads) within established setback zone.

Protecting soil resources from erosion is essential to agricultural production and to the well-being the native species that rely on clean water and habitat for their survival.

Sometimes the best use for marginal farmland is to restore it to its original state, as was done with this Arkansas wetland that experienced frequent, unpredictable flooding.

Easements language should address the management of high priority areas, such as along waterways, where it is important to protect riparian vegetation and ensure that water withdrawals do not degrade the habitats of native species.

Water Resources

- Define habitat values and goals for the protection of water bodies.
- Maintain or restore the hydrological and ecological function of ponds, creeks, and streams.
- Prohibit de-watering of creeks and streams to the point where they do not function for the benefit of native species.
- Prohibit the sale of water off the farm or ranch.
- Prohibit introduction of invasive plants and animals to wetlands and water bodies.

Roads

- Ensure that road construction, location, and maintenance are designed to minimize negative impacts to natural habitats and resource values including: soil and water quality; riparian zones; wildlife feeding, breeding and nesting habitat; and landscape connectivity.
- Retire and restore unneeded roads; prohibit building of nonessential roads.
- Prohibit motorized off-road travel unless essential for management.

Anson Farm

The value of easements can be increased significantly if they are designed to protect key natural resources found throughout the larger landscape. The Anson farm in New York's Adirondack Park borders the Split Rock Wildway that links Lake Champlain with protected State lands in the mountains beyond. It also contributes to the scenic and cultural amenities that distinguish the region. Easements that complement a larger plan and the efforts of neighbors can help realize conservation goals that transcend the limits of individual ownerships.

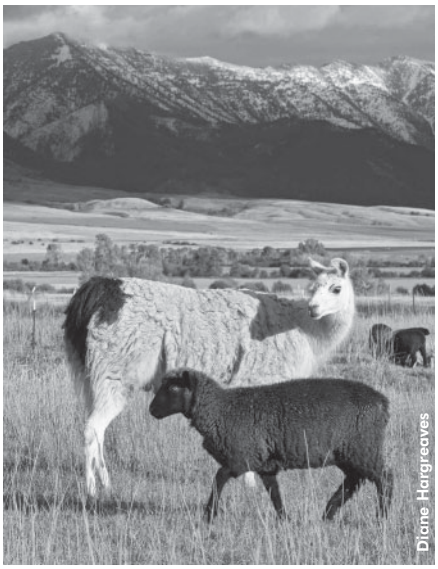
Nestled in the Champlain Valley of Essex County, New York, within the six-million-acre Adirondack Park, the Anson farm retains much of its 19th century character and charm. But historic land use patterns are changing throughout the region; this bucolic landscape is rapidly being converted into an exurban patchwork of vacation homes. Anxious to help stanch this loss of regional heritage — and to protect the Anson farm's open space, scenic, wildlife, and other conservation values — the Adirondack Land Trust worked with the owner to secure the gift of an easement encouraging small-scale agricultural uses that would not significantly impair or interfere with the protection and enhancement of the conservation values of the property. The easement includes a list of prohibited activities such as residential, commercial, or industrial uses. It allows agricultural uses that follow USDA Natural Resources Conservation Service best management practices and exclude plowing, tillage, and livestock from 100-foot vegetative buffers alongside streams and water bodies. The easement also prohibits the use of herbicides, pesticides, or other harmful chemicals, in conformance with the federal organic program. Subdivision of the property is not allowed, and future construction is limited to replacement of existing residence and accessory structures, with the option of building one more structure — all of which must blend with the surroundings and architectural character of the homestead. Harvesting timber from the recovering woodland is also prohibited, in expectation that it will eventually develop into an old-growth ecosystem. The public cannot recreate on the property without permission, but all benefit from the farm's healthful food products, and from the clean water, abundant wildlife, and other services of its protected ecosystems. ◊

Grazing

- Establish grazing restrictions that provide desired protection for forage, soil, water, threatened or endangered species, and other priority values. These standards should be outcome-based and easily monitored. Provisions may include meeting a goal for the amount of standing residual dry matter (RDM), causing no degradation of soil and water, and excluding domestic animals from specific areas entirely or at certain times of the year.
- Prohibit control of native predators by lethal methods, except when the circumstances of livestock deaths have been documented and the predator has been proven to be repeatedly at fault. In such cases, use humane practices to remove or destroy the specific problem animal.

Invasive Species

- Control invasive, non-native species using ecologically sound practices.
- Prohibit introduction of any new invasive species.
- Prohibit planting any non-native species except where expressly permitted (e.g., as crops and around the house and garden).



Predator friendly practices, such as using guard llamas to protect sheep, provides protection while minimizing fatal interactions.

High Ground Organics

In an area with high development pressure due to its location (near the ocean and just over the hill from Silicon Valley), farmland with an old dairy operation came up for sale. Open Space Alliance (OSA) moved to purchase the farm with funding assistance from the California Coastal Conservancy and the County of Santa Cruz — not only because of its agricultural value, but also because it abuts Harkins Slough, a wetland teeming with wildlife including plant and animal species of special concern. OSA crafted two conservation easements, one for agriculture and the other for wildlife habitat. The County of Santa Cruz is the easement holder for the approximately 20 acres of hilltop cultivated fields; the easement requires that the farm be managed organically, with flexibility built in for times of extreme crisis. OSA donated the second easement to the California State Department of Fish and Game, on about 18 acres of highly sloping, uncultivated lands and drainages connecting the farm to the Slough. This easement protects natural habitat and native plants and animals (including endangered species), maintains a protective buffer for the fresh water wetland, and requires measures that reduce sedimentation such as installing grass filter strips and hedgerows. At the time, local farmer Stephen Pedersen was farming on leased land, not sure if he would ever be able to purchase land in this expensive area. The terms of the loan from the Coastal Conservancy made it possible for OSA to sell the property to Pedersen for a more affordable price. High Ground Organics now produces organic fruits, vegetables, and flowers for the local community, with sales sites at area farmers markets, stores, and a Community Supported Agriculture outlet. ◊

Conservation easements can serve multiple purposes, such as protecting natural areas and open space, scenic amenities, water resources, and agricultural values.

Fences

- Specify that fence construction, location, and season of use be designed to serve its purpose while minimizing habitat fragmentation, hazards to wildlife, and disruption of key wildlife travel and migration corridors.

Incorporating Ecolabeling Programs within Easements

- When organic farming is a desired outcome of both the easement holder and landowner, provisions can be made to restrict practices to conform to the third-party standard of the USDA organic program. Since organic practices prohibit toxic chemicals and require extra protections to sustain soil and water quality and conserve biodiversity, such practices make particular sense next to wetlands, rivers, and other sensitive habitats.
- In the absence of a requirement for organic certification, easement provisions should allow only the minimal amounts of pesticides, herbicides, and fertilizers necessary to accomplish reasonable management goals, and should prohibit raising genetically modified organisms, if those are priorities for the easement grantees. Monitoring may present extra challenges though, when not tied to an ecolabel.
- Third-party ecolabels, such as Salmon Safe (protects water quality and native salmon), Food Alliance (addresses environmental and social aspects of production), and Predator Friendly (protects native predators) may be used alone or in combination with the USDA organic program.

Wild Harvesting

- Prohibit commercial harvesting of plants, animals, or other materials from protected areas, or by establishing harvesting limits.

Ecological Functions and Processes

- Manage the land to accommodate normal flood regimes including periodic inundation.
- Consider the benefits of controlled burns in fire-dependent ecosystems.
- Establish natural areas where a succession of native communities can evolve.
- Provide feeding and nesting areas for native pollinators and seed dispersers.

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