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CONSERVING FARMLAND IN CALIFORNIA: FOR WHAT AND FOR WHOM? HOW AGRICULTURAL CONSERVATION EASEMENTS CAN KEEP FARMLAND FARMED *by Kendra Johnson**

INTRODUCTION

California farmland is disappearing.¹ As farmers age² and their heirs move to other lines of work, the agricultural land traditionally making up small- and medium-sized farms is being consolidated by large-scale agribusiness or, increasingly, moving out of production.³ Although smaller farmers have never been responsible for a majority of California's agricultural production, they do offer important social, economic, and environmental benefits to their local communities. They also contribute to local and national food security by improving crop diversity and lessening dependence on imports.

The shift away from productive agricultural use is largely related to the sprawling development that consumes valuable farmland: about fifty thousand acres of farmland in California are paved over annually.⁴ Land values in California have skyrocketed in recent years and as cities sprawl farther beyond traditional suburbs, formerly rural agricultural land has increased dramatically in value. As a result, small farm owners find it more profitable to subdivide, develop, or simply sell their land than keep it in production—even on land producing some of California's most profitable crops. Farmland along the expanding urban fringe is often purchased by wealthy suburbanites who crave open space and country estates but not necessarily agriculture.⁵

One relatively recent and innovative solution to preserving productive agricultural land is the Agricultural Conservation Easement (“ACE”). Generally, an easement is a legal tool that gives one person or entity an interest or right in another person's property. Frequently easements give the third party the right to restrict the owner's use of his or her property in a specific way. Conservation easements encourage land conservation by restricting development. Often the party with the interest in the land is a municipal government or land protection organization known as a land trust.⁶ California state law⁷ provides for conservation easements and federal tax law provides for substantial tax benefits to donors of conservation easements.⁸

Agricultural conservation easements, in particular, have emerged as a popular tool in protecting not only “open space,” but also top-quality soils in productive farming areas or working

landscapes. This is a significant step, however many ACE programs do not go far enough when they merely set aside valuable land. Protecting open spaces preserves the inherent value of nature and ecosystems but stops short of boosting rural economies, maintaining domestic food production as a societal asset, and protecting our food independence and security. ACEs can

be used to achieve the dual goals of protecting open space and ensuring that productive land is actually farmed.⁹

This paper discusses the challenges of maintaining the benefits of ACEs in California where land value has increased so drastically that even the encumbered property is worth more than the potential agricultural productivity of the land. It then explores three tools used by other states' easement programs that, if adopted by California

land trusts, could improve the tools available to preserve California's working agricultural landscapes.

ACEs IN CALIFORNIA: THE CHALLENGE OF LAND VALUE & KEEPING LAND IN PRODUCTION

“It's Not Farmland Without Farmers,” cautions a bumper sticker put out by American Farmland Trust. Even so, would-be farmers are dissuaded by competitive global markets, industry consolidation, and rising land prices. Open space and farmland conservationists, ‘Locavores’ promoting regional food economies, rural sociologists, Farm Bill reform groups, and agricultural industry representatives are all concerned that young and incoming farmers are becoming scarce. While the consolidation of big agriculture diminishes the need for new farmers, those small- and medium-scale farmers intrepid enough to enter the business need a leg up. These smaller farms often provide

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Photo courtesy of Yolo Land Trust

ecological, social, and even economic benefits to the public that industrial agriculture does not provide.¹⁰ Lack of access to affordable farmland is a real barrier to new-entry farmers that must be addressed to keep farms farmed.

Due to unprecedented residential development pressures, especially the proliferation over the past twenty-five years of “rural sprawl,” agricultural land prices throughout much of California have climbed well out of reach of new farmers.¹¹ Increased demand for rural ranchettes, for example, is having a grave impact on land prices. For example, recently land values in the San Joaquin Valley increased from ten thousand dollars per acre for agricultural land to upwards of two hundred thousand dollars per acre when that land was re-zoned and sold for development. The result is that ranchettes are “pricing bona fide commercial farmers out of the market for the most productive agricultural land.”¹²

Small farms, defined for our purposes as those agricultural parcels at or near their zoned minimum parcel size (or usually ten to eighty acres), present a particularly difficult conservation challenge. The value of a parcel of land as a home site consistently overshadows its agricultural production value. Though these farms may play a valuable part in an area’s agricultural economy, ecological resilience, and rural culture, conservation easements may not successfully preserve them as working landscapes. Non-farmers who buy these properties but do not need agricultural income may let production lapse. Moreover, non-farm buyers are often willing to out-bid farmers on such properties, establishing an “after-value” which outstrips agricultural income potential.

For example, consider a forty acre farm property with a modest house within an hour and half driving distance of the San Francisco Bay area valued at one million dollars. A standard agricultural conservation easement, prohibiting further subdivisions, residential buildings, and location of farm buildings, is appraised at \$300,000, bringing the easement-encumbered property value down to \$700,000. Based on local crop production data and a thorough farm business plan, an organic farmer calculates that she could only afford to buy the farm for five hundred thousand dollars.

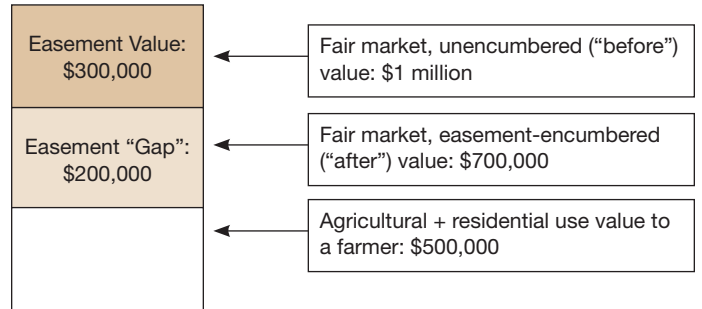


Figure 1: Easement “Gap”

As you can see, standard agricultural conservation easements often do not yield enough easement value to bring properties into a price range affordable by farmers. The difference between easement-encumbered estate home value and agricultural use value results in the “gap” shown in this example.

This lack of affordable access and the increased likelihood that parcels owned by non-farmers will fall out of production are

creating a stir in the farmland conservation community. Of twenty-five easement programs surveyed nationally in 2005, only five reported that average prices of easement-protected parcels were still affordable for buyers seeking to continue farming on those parcels. Thirteen said land resale prices in their areas had clearly become unaffordable to farmers; and

only nine said a majority of their protected parcels are purchased by farmers. Only one of these easement programs is in California; the Marin Agricultural Land Trust reported that easement-protected rangeland is only marginally affordable for ranchers there.¹³

A more recent series of interviews with thirteen easement programs in California revealed that fewer than forty percent of properties under an agricultural easement were under production by their owners.¹⁴ Since most of these properties are still in their first generation of ownership under the easements, there is concern that the number of owner-operators of preserved farmland will diminish further after these parcels are sold.¹⁵ Some land trusts are also beginning to see small farms as an important part of agricultural economies and local communities.¹⁶ Since small

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farms are especially vulnerable to the “easement gap” problem, these land trusts ask how to make rural housing more affordable and avoid further farmland conversion to non-farmer ownership as they strive to protect working landscapes.¹⁷

CREATIVE EASEMENT ALTERNATIVES: ENCOURAGING LAND-OWNERSHIP BY FARMERS

A number of land trusts and farmland conservation programs in the Northeast have adopted farmland conservation tools to directly address the related goals of ensuring continued farming and land-affordability for farmers. Similar to the earliest conservation easements, these tools have lacked precedent and sometimes been controversial. However, in two decades of use, a great deal has been learned.

Bringing down the market values of smaller farms in California to affordable prices for farming families requires these types of legal tools that are not currently part of standard conservation easement transactions in the state. As discussed below, these may include increased residential building restrictions, requirements that limit an owner’s right to sell his or her farm, or affirmative mandates of agricultural use.

EXCLUSION OF RESIDENCES AND OTHER INFRASTRUCTURE

Some easement programs exclude residences and other infrastructure in order to eliminate the disproportionate value they add to whole farms. As authorized by its state law, the Massachusetts Agricultural Preservation Restriction (“APR”) does this as a matter of course, carving out homesites and even agricultural buildings from APR-protected parcels.¹⁸ Similarly, Vermont law permits the carve-out of residential and farm buildings and the majority of Vermont Land Trust (“VLT”) conservation easements do so.¹⁹ This tool results in bare land easement valuation remaining unaffected by increasing residential values. It also eliminates difficult appraisal issues, instead allowing the land to be transferred for its agricultural value alone. Meanwhile, it effectively creates small residential parcels surrounded by agriculture, which can be sold separately from the farmland. In both states, while the majority of these building areas or “farmsteads” have been purchased by the owners of adjacent farmland, there is an emerging concern that their exclusion from agricultural easements will encourage consolidation of smaller farms into fewer, larger farms while the residential parcels become expensive, thus reducing opportunities for entering farmers to live where they farm.²⁰ Some land trusts adhere to the principle that farmsteads are integral as housing for farmer-owners and as infrastructure for continued farming operations, and would not choose to separate them.

Practically speaking, the exclusion of several-acre farmsteads from greater acreages of “bare land” would not be possible in California. This is because local zoning ordinances for minimum parcel sizes, as enabled by state law,²¹ require that farmland not be carved up into parcels below that minimum—often 40, 80, or even 160 acres in agriculturally-zoned areas. However, the California Farmland Conservation Program and the federal Farm and Ranch Lands Protection Program do fund

conservation easements which include design controls commonly limiting building location (or “envelope”), and allowable size (usually to a range of 1,500 to 4,000 square feet). Sometimes the right to secondary or additional dwellings and certain nonagricultural infrastructure—equestrian arenas, for example—is eliminated as well.²² However, farm employee housing is allowed under California State Code²³ and should not be extinguished by agricultural easements. By restricting “rural estate” or “trophy home” use, easements can weed out some of the non-farmers bidding on farm properties. More research is needed to determine whether such restrictions actually dissuade a substantial number of non-farmer buyers and how they impact property values.

AFFIRMATIVE OBLIGATION TO FARM

Standard agricultural easements give up or restrict development rights; few require that the land be actively farmed. A requirement to farm, usually in the form of an “affirmative covenant,” defines agricultural use and establishes remedies, then consequences, for failure to comply. The Massachusetts Agricultural Preservation Restriction, administered by the Commonwealth of Massachusetts, may be the only easement program to currently include the agricultural use requirement, in the form of an affirmative covenant, in *all* of its easements.²⁴

Affirmative covenants are additional restrictions on the land and obligations on the landowner that reach beyond a standard conservation easement. A covenant requiring the landowner to farm the property makes it considerably less appealing to any buyer other than a farmer. Limiting the pool of potential buyers only to farmers further reduces the value of the encumbered land while correspondingly increasing the cost of the easement.²⁵ Again, more data is needed to determine the real impact of affirmative language on market value.

While the Massachusetts Code specifically authorizes this affirmative farming requirement,²⁶ the legal viability of such language in California is uncertain. The California Code²⁷ does not explicitly provide for affirmative easement language; instead it defines easements, in the negative, as limitations. It does, however state the goal of the “preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition.”²⁸ It is not clear whether affirmative language is enforceable in California courts. Because of this concern and in order to reduce the risk that affirmative wording results in termination of the conservation easement, strong “backup” language should be incorporated, stating that in case the affirmative clause is ever found unenforceable, the remainder of the easement is to remain in effect.²⁹

There is some precedent for affirmative covenants in California ACEs. In some cases, such as in easements held by the Brentwood Agricultural Land Trust and at least one easement of the Marin Agricultural Land Trust (“MALT”), the land trust requires submission and approval of an agricultural management plan.³⁰ If the owner fails to comply with that plan, the land trust may require the landowner to lease the land out for farming. Tougher enforcement mechanisms reserve the right of the land



Photo by Bob Nichols, USDA Natural Resources Conservation Service



Photo courtesy of Kendra Johnson

trust to collect “damages” or exercise an option to purchase the farm.³¹

On Live Power Farm in Covelo, California, for example, the Equity Trust, a nonprofit organization based in Massachusetts, holds the first known affirmative easement in the state, and one of the very first in the nation.³² Equity Trust distributed a sample easement document with affirmative language along with a related commentary³³ for the benefit of land conservation groups interested in doing similar work. MALT and the Monterey County Agricultural and Historic Land Conservancy both hold easements with affirmative use language, as does the Land Trust for Santa Barbara County on an urban farm called Fairview Gardens. The Tri-Valley Conservancy’s South Livermore Valley easements require agricultural production, but for only eight years. Sample affirmative agricultural use language, legally reviewed for use in California but not yet exercised, can be found in a California FarmLink model affirmative easement.³⁴

OPTION TO PURCHASE AT AGRICULTURAL VALUE

In response to the concern that protected farms are purchased by non-farmers at prices higher than farmers can afford, legislation in two states established innovative farmland conservation programs that now authorize Options to Purchase at Agricultural Value (“OPAV”) in their agricultural conservation easements.³⁵ An OPAV allows the easement holder to step in any time a farm property threatens to sell for estate value and, as such, provides a substantial deterrent to non-farm buyers.³⁶

OPAVs were adopted by the Commonwealth of Massachusetts in 1992 and by the VLT in 2003.³⁷ Whereas the Massachusetts program requires an OPAV, the Vermont program offers landowners a choice to relinquish the OPAV to the VLT.³⁸ Most do so for the additional easement value it provides, as well as assurance that the land will continue to be transferred to other farmers. Equity Trust includes an OPAV in its model agricultural easement as well. Based on its use in Massachusetts and Vermont, an OPAV can be a strong deterrent to non-farmer buyer and an essential component to preserving farmland.

An OPAV can be exercised at time of sale or assigned to another farmer. In over fifteen years, an option has not yet been exercised in Massachusetts, and was exercised only once by the VLT when a clearly non-farm buyer made a purchase offer on an easement-encumbered farm. To save paperwork and government involvement and thereby appeal to a broader group of farm owners, Vermont waives OPAV when a farm is transferred within a family or to a qualifying farmer as defined by the IRS.³⁹

Vermont appraiser Justus DeVries estimates that there is roughly a twenty to thirty percent increase in standard easement value with an OPAV, for a total easement value of up to sixty to seventy percent of a property’s fair market value.⁴⁰ In contrast to the Massachusetts APR, the VLT has begun using easements with OPAVs for whole farms, including farm buildings and residences. This approach is supported by Equity Trust and is gaining popularity in Vermont, as it protects affordable housing as an integral part of these agricultural areas. Homes and home sites, however, confound so-called “agricultural value” and present significant appraisal challenges. Specific appraisal methodology must be prescribed to arrive at a mutually acceptable property valuation.

In the VLT and Massachusetts APR models, the OPAV is triggered by a proposal or attempt to sell the property. The Equity Trust document includes an additional “triggering event”—the failure to maintain “qualified owner status.”⁴¹ It becomes, in effect, an enforcement mechanism for the affirmative agricultural language also included in that easement. Each model addresses the setting of the option/purchase price differently. If the owner has already entered into a purchase and sale agreement with a third party, the OPAV holder may match that amount. The Equity Trust model and the Massachusetts standard OPAV present two valuation methods for determining the purchase price. The first approach is a standard appraisal of “As-Restricted Value” (Equity Trust) or “Fair Market Agricultural Value” (Massachusetts APR) value as determined by comparable sales and other standard appraisal methods.⁴² “Agricultural value” is an adequate description in Massachusetts projects, as

residences and buildings are not included in these easements. The second approach offered by these similar documents is to assess the land and improvements according to the previous “governing appraisal” and augment with an inflation rate index. These methods are problematic when home sites are included because home values have, until recently, increased faster than the inflation rate. The VLT model OPAV for “Operating Farms” uses a similar approach to assess agricultural value, but adds the value of farm structures and improvements, as well as any residence and appurtenant structures/improvements according to the replacement cost approach to valuation.⁴³

OPAV restricts resale values to a “farm supportable price.” While an OPAV increases the original easement cost expended by the land trust, it also gives the organization a measure of control over future land transactions and deters non-farm buyers. Furthermore, it creates an opportunity for land trusts to help farmers purchase these farms each time land is transferred. Drawbacks are that an OPAV may limit the ability of new buyers to obtain financing, and land trusts may not have cash or financing available to properly exercise the option.


An OPAV has not yet been used in California. In the absence of authorization by statute, such an option may not be enforceable by California easement programs: challenges to the “triggering” of an OPAV, for example, and to appraisal methodologies such as the VLT method described above, might be expected. Before deciding to use this concept, the legal issues should be explored and addressed.

CONCLUSION: POTENTIAL FOR CALIFORNIA?

California’s farmland protection policymakers, land trusts, and supporters have a tough row to hoe in coming years. If farmland conservation efforts do not begin to include access and affordability strategies, farmers will not experience the benefits of farmland protection and California’s agriculture will not be protected. The list of tools described in this article is not exhaustive; there are many other ways to support the use and ownership of farmland by farmers. Non-easement tools for example, such as land trust ownership with lifetime leases to farmers, collaboration with affordable housing programs or community land

trusts, purchase of farming rights by farmers needing land security but not all the residential value, and other forms of creative or cooperative ownership, deserve further attention.

California land trusts who wish to further the use in ACEs of building and parcel restrictions, or be state leaders in the adoption of affirmative use requirements or OPAVs, will face a number of financial and legal barriers. At least at first, these new legal tools will require higher per-acre easement acquisition costs as well as greater staff resources dedicated to transactions, monitoring, and stewardship than they do currently. Improved support and funding for these innovative projects will therefore be key to their applicability and success in California. The tools yet untested in California courts (again, affirmative covenants and OPAVs) may also subject land trusts to increased legal scrutiny and the risk of expensive court battles. If, on the other hand, land trust leaders can begin to set precedent for the use of easement tools benefiting smaller farmers, amendments to State Civil Code, and other relevant statutes may more easily follow.

If California’s fertile agricultural lands are threatened by urban and rural ranchette development, its farmers are also threatened by intense competition for control over farmland. If the State’s land trusts and policymakers decide to protect not only farmland but the myriad social, economic, and environmental public benefits offered by our small farmers, they will find that their eastern counterparts have already set important examples. Agricultural landscapes are, by definition, working landscapes and will be best conserved if the livelihoods which define them are supported as well. 

Thanks to Debbie North and the Yolo Land Trust for asking the right questions and making possible the report upon which much of this article is based. Thanks to Conservation Partners for thoughtful review and comments. Thanks to California Farm-Link for working on behalf of beginning farmers, and first bringing this question to my attention. Finally, thanks to the many other land trusts, both California and Northeastern, whose staff and associates provided information about small farm easement tools and challenges.

Endnotes: Conserving Farmland in California

¹ See CAL. DEP’T OF FOOD & AGRIC., CALIFORNIA AGRICULTURAL RESOURCE DIRECTORY 2006 1, 28 (2006), available at <http://www.cdfa.ca.gov/files/pdf/card/AgResDirEntire06.pdf> (explaining that there were a reported 144,000 farms in California in 1950; the number plummeted by more than half by 1970, climbed to a consistent ~85,000 for most of the 1990s. However from 1999-2005, the number of reported farms in California dropped alarmingly — from 85,000 to 76,500 farms statewide).

² CALIFORNIA FARMLINK, A FARMER’S GUIDE TO SECURING LAND (2008).

³ See CAL. DEP’T OF FOOD & AGRIC., *supra* note 1 (explaining that there were 144,000 farms in California in 1950 and only 76,500 in 2005).

⁴ See EDWARD J. THOMPSON, AM. FARMLAND TRUST, PAVING PARADISE: A NEW PERSPECTIVE ON CALIFORNIA FARMLAND CONVERSION 1, 3 (2007), available at

http://www.farmland.org/programs/states/ca/Feature%20Stories/documents/PavingParadise_AmericanFarmlandTrust_Nov07.pdf (last visited Oct. 10, 2008).

⁵ See generally Greg Kirkpatrick, *Case Study 20: Fresno County California*, in UNDER THE BLADE: THE CONVERSION OF AGRICULTURAL LANDSCAPES (Richard Olson & Thomas Lyson eds., 1999).

⁶ See Adina Merenlender et al., *Land Trusts and Conservation Easements: Who is Conserving What for Whom?*, 18 CONSERVATION BIOLOGY 65, 68 (2004) (quoting The Land Trust Alliance’s definition of a land trust as “any organization that acts directly to conserve land”).

Endnotes: Conserving Farmland in California
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⁷ Agricultural Land Stewardship Program of 1995, CAL. PUB. RES. CODE §§ 10260-10268 (West 2008).

⁸ See I.R.C. § 170 (2000).

⁹ See Tom Daniels, *Saving Agricultural Land with Conservation Easements in Lancaster County, Pennsylvania*, in PROTECTING THE LAND: CONSERVATION EASEMENTS PAST, PRESENT, AND FUTURE 166-68 (Julie Ann Gustanski & Roderick H. Squires eds., 2000) (demonstrating how an ACE program in Lancaster County, Pennsylvania has decreased the loss of farmland).

¹⁰ See PETER M. ROSSET, *Policy Brief Number 4: The Multiple Functions and Benefits of Small Farm Agriculture in the Context of Global Trade Negotiations*, FOOD FIRST: THE INST. FOR FOOD AND DEV. POL'Y 1, 2-3 (1999).

¹¹ Stephen M. Wheeler, *The Evolution of Built Landscapes in Metropolitan Regions*, 27 J. OF PLAN. EDUC. & RES. 400, 405 (2008).

¹² Edward Thompson Jr., California State Director, American Farmland Trust, Annual Legislative Symposium of the Planning & Conservation League (Jan. 12, 2008).

¹³ ALVIN D. SOKOLOW, AM. FARMLAND TRUST, A NATIONAL VIEW OF AGRICULTURE EASEMENT PROGRAMS: MEASURING SUCCESS IN PROTECTING FARMLAND — REPORT 4, at 35-37 (2006), *available at* <http://www.farmland.org/resources/reports/NationalView.asp> (follow “Read the Report” hyperlink below report 4, the

follow “Report 4.pdf” hyperlink under “download report”) (last visited Nov. 10, 2008).

¹⁴ See Kendra Johnson, *Preserving Farmland, But For Whom?* 31 (Mar. 2008) (unpublished Master’s Thesis, UC Davis Community Development Graduate Group, on file with author).

¹⁵ Valerie Cotsalas, *Preserving Land, but Not for Famers*, N.Y. TIMES, Aug. 5, 2007, *available at* <http://www.nytimes.com/2007/08/05/realestate/05lizo.html> (last visited Oct. 15, 2008). See DVD: *Farmers & Farmland for the Future: Beyond Conservation Easements* (Equity Trust, Inc. 2005). See also EQUITY TRUST, MODEL AGRICULTURE CONSERVATION EASEMENT WITH OPTION TO PURCHASE (2005), <http://equitytrust.org/ModelDocs.html> (follow hyperlink to title) (last visited Oct. 10, 2008); Adina Merenlender et al., *Land Trusts and Conservation Easements: Who is Conserving What for Whom?*, 18 CONSERVATION BIOLOGY 65 (2004); Jeff Pidot, *Reinventing Conservation Easements*, LAND LINES, Oct. 2005.

¹⁶ JOHNSON, *supra* note 14, at 11-12.

¹⁷ JERED LAWSON, COMMUNITY ALLIANCE WITH FAMILY FARMERS, THIS LAND SHALL BE FOREVER STEWARDED (1997), *available at* <http://www.caff.org/publications/Thislandshallbeforeverstewarded-screen.pdf> (last visited Oct. 15, 2008).

¹⁸ MASS. GEN. LAWS ANN. CH. 184, § 31 (West 2008).

¹⁹ VT. STAT. ANN. tit. 10 § 6303 (2008).

²⁰ Charles A. Francis, *Greening of Agriculture for Long-Term Sustainability*, 96 AGRONOMY J. 1211, 1214 (2004) (stating that the trend toward more federal and state regulation of property may lead to farm consolidation to the detriment of the owners of small farms).

²¹ CAL. CIV. CODE § 815 (West 2008).

²² See generally CAL. FARMLAND CONSERVANCY PROGRAM, MODEL EASEMENT (2006), http://www.conservation.ca.gov/dlrp/cfcp/overview/Pages/cfcp_model_easement.aspx. See also Farm and Ranch Lands Protection Program, <http://www.nrcs.usda.gov/programs/frpp/> (last visited Oct. 15, 2008).

²³ CAL. HEALTH & SAFETY CODE § 17008 (West 2008).

²⁴ MASS. GEN. LAWS ANN. CH.184, § 31 (West 2008). See also Mass. Dep't of Agric. Res., <http://www.mass.gov/agr/landuse/APR/index.htm> (last visited Oct. 15, 2008).

²⁵ SOKOLOW, *supra* note 13, at 13-14.

²⁶ Mass. Dep't of Food & Agric., *Legislation Filed to Keep Protected Mass. Farmland Affordable for Farmers*, 78 FARM & MARKET REPORT 1, 1 (2001).

²⁷ CAL. CIV. CODE §§ 815-816 (West 2008).

²⁸ CAL. CIV. CODE § 815 (West 2008).

²⁹ See, e.g., Lawrence R. Kueter & Christopher S. Jensen, *Conservation Easements: An Underdeveloped Tool to Protect Cultural Resources*, 83 DENV. U. L. REV. 1057, 1065 (2005).

³⁰ See generally Brentwood Agric. Land Trust, Land Conservation, How Does BALT Protect Precious Farmland, <http://www.brentwoodaglandtrust.org/page/page/4271814.htm> (last visited Oct. 22, 2008).

³¹ See discussion *infra*.

³² See generally, LAWSON, *supra* note 17, at 2-3.

³³ EQUITY TRUST, *supra* note 15; see also EQUITY TRUST, COMMENTARY ON MODEL AGRIC. CONSERVATION EASEMENT WITH OPTION TO PURCHASE (2005), <http://equitytrust.org/ModelDocs.html> (follow hyperlink to title) (last visited Oct. 10, 2008).

³⁴ See generally CAL. FARMLINK, INNOVATIVE EASEMENT LANGUAGE EMPHASIZING AGRIC. PROD. (2002), http://www.coastal.ca.gov/la/docs/Farmlink_affirmative_easement_lang.pdf; see also CAL. COASTAL COMM'N, AFFIRMATIVE AGRIC. EASEMENT WORKSHOPS: A SUMMARY (2007), http://www.coastal.ca.gov/la/docs/Affirmative_Easement_Workshops_Summary.pdf (last visited Nov. 10, 2008).

³⁵ MASS. GEN. LAWS ANN. CH. 184, § 31 (West 2008); see also VT. STAT. ANN. tit. 10 § 6303 (2008).

³⁶ Interview with Christine Chisolm, APR Program Planner, Agricultural Development, Massachusetts Department of Agricultural Resources, in Boston, Ma. (2008); Interview with Lorraine O'Connor, Chief Veterinarian Health Officer, Animal Health, Massachusetts Department of Agricultural Resources, in Boston, Ma. (2008); Interview with Carol Szocik, APR Senior Land Use Planner, Massachusetts Department of Agricultural Resources, in Boston, Ma. (2008) (citing generally positive statements by the interviewees agreeing that OPAV is a strong deterrent to non-farm buyers).

³⁷ MASS. GEN. LAWS ANN. CH. 184, § 31 (West 2008). See also VT. STAT. ANN. tit. 10 § 6303 (2008).

³⁸ EQUITY TRUST, *supra* note 15.

³⁹ VT. STAT. ANN. tit. 10 § 6303 (2008).

⁴⁰ Personal Communication with Justus DeVries, Appraiser (2008).

⁴¹ EQUITY TRUST, *supra* note 15, at 8.

⁴² See *id.* See also MASS. GEN. LAWS ANN. CH.184, § 31 (West 2008).

⁴³ Vermont Land Trust Memo to landowners entitled "Operating Farms: Vermont Land Trust Option to Purchase" (2006).