

The following discussion of land tenure and financing for Community Supported Agriculture (CSA) was adapted from a chapter prepared by Chuck Matthei of the Equity Trust for *Farms of Tomorrow Revisited*, edited by Trauger Groh and Steven McFadden (Biodynamic Farming and Gardening Association, 1997). While the article specifically addresses the needs of CSA farms—whose consumers are enrolled as members, purchasing annual 'shares' in the farms' production—much of the information it provides will be relevant to other farms as well. *For more information*, contact Equity Trust, 539 Beach Pond Road, Voluntown, CT 06384, telephone/fax (860) 376-6174; info@equitytrust.org, or visit our web site at www.equitytrust.org

Gaining Ground: How CSAs Can Acquire, Hold, and Pass On Land

While the first decade of Community Supported Agriculture (CSA) in the United States has been impressive and future prospects look bright, the majority of CSA farmers are still on shaky ground. Many are working borrowed or rented land, without long-term leases; some are trying to purchase land, at market prices far higher than farm income can support; and even those who own land are trying to figure out how to provide for their retirement and their heirs, yet insure the continuation of farming in future generations.

Secure land tenure and reliable sources of financing are essential for a viable farm operation. Without them, existing farmers face constant uncertainty and have a difficult time making necessary improvements; prospective farmers may not begin at all. Yet the reality is that most CSA farmers will not be able to obtain sufficient financing from conventional sources, and many will need substantial discounts or subsidies in any event

The key to assembling the necessary resources lies in distinguishing the essential personal interests in farm properties from the inherent public interests. Defining and protecting the public interests legitimizes the application of charitable and public funds to a land purchase, thereby assuring affordable access to the farmer. In most cases, this is achieved by establishing a relationship and dividing the property interests between a farmer and a nonprofit land trust, with the land trust serving as steward of the public interest.

The current land tenure problems can be solved, by mobilizing the unique community that Community Supported Agriculture has created. If you are a CSA farmer or member, this article is written especially for you. Working together and reaching out to friends and neighbors, local institutions, land trusts, and even local governments, you can secure your own position and prepare the ground for other farmers as well.

Finding Your Place

Most CSA farmers begin as apprentices and then, in your first years as independent producers, many of you use someone else's land. But eventually each of you will need a secure site in which to invest many years of labor and a substantial amount of capital.

Choose your land carefully, keeping long-term concerns in mind from the outset. Pay more attention to productivity than panoramic views. Learn from the experiences of other farmers, and be realistic about size, soil quality, availability of water, and the various

improvements that a successful farm will require. And compare the terms on which various properties are offered to you.

If you are borrowing or renting land, make sure that you have a clearly written and detailed lease agreement. Consider the term or time commitment of a proposed lease, permitted land uses, and the possibility of credit for improvements you might make. Be mindful of the market value of the property and the level of support you might find in that community if you later have to purchase the land to secure your tenure. Whenever you enter into a lease, ask for a right-of-refusal or purchase option in the event that the owner puts the land put up for sale. A right-of-refusal will give you the chance to match the bid of any prospective buyer; an option will actually fix the price (or price formula), and perhaps define the period of time in which you have the right to buy.

If you want to explore the possibility of purchasing rather than leasing, be aware that there are many ways to acquire land at below-market prices. Look for motivated sellers who may be willing to take less than market value to insure that the land they love remains a working farm. Some elderly landowners may respond if you will let them remain in their homes, and perhaps provide some personal services, after the land transfer. Other landowners may be attracted by the tax benefits that come with a 'bargain sale' to a nonprofit land trust organization. (These are usually landowners whose property values have appreciated substantially and who have significant personal income. The difference between the bargain sale price and the fair market value will be considered a charitable gift, and the resulting tax deduction may be spread over several years; the capital gains tax liability will be reduced as well.)

Local clergy, attorneys and investment advisors, sympathetic realtors, and some of your own CSA members may be in a position to know which landowners fit this description. Land trust directors and town officials may also know—and sometimes the land trust, local government, or other institutions may own land themselves that can be made available to you. It is never too soon to meet them and acquaint them with your program. The community-building aspect of Community Supported Agriculture is not limited to the recruitment of members; it involves relationships and credibility throughout the community.

Forming a Relationship with a Land Trust

There are two families of land trusts in this country—*conservation land trusts* and *community land trusts*—with significant similarities and differences between them. Typically, they are nonprofit corporations (not legal trusts), locally based and democratically structured. The same legal and financial tools are available to both. They are capable of a variety of tenure arrangements, but each may have customary practices and may be unfamiliar with other models.

Conservation trusts currently number about 1500, with a membership that is primarily middle and upper class. Traditionally, they have been devoted simply to open space preservation and wildlife conservation, but a growing minority now express an interest in active farm and forest lands and a few, like the Vermont Land Trust and the Marin Agricultural Land Trust in California, actually specialize in working lands. Conservation trusts usually hold an easement, or restriction, on farmland, leaving the "fee" interest, or title, in the name of the farmer. The conservation easements are designed to preserve the environmental integrity of the land by limiting development and protecting its critical natural features.

In contrast, there are only 120 community land trusts, and they are primarily located in lower

income communities. Most have been established to provide the essential benefits of ownership to those who are excluded from the conventional real estate market. Many are in urban areas and few have farm holdings, but they should be receptive to a CSA proposal.

Community land trusts usually retain title to the land and offer the residents a lifetime, inheritable lease. Lessees may own the improvements on the property, and build equity by their personal investment of capital and labor; however, the lease includes a purchase option and price formula, giving the land trust the right to buy the improvements from a departing farmer and transfer them at a fair price to the next. In this way, community land trusts address the social and economic challenges of conservation as well, keeping farms available and affordable for farmers.

The difference between an individual holding title and a land trust doing so may appear to be quite significant, but in fact may not be as important as it seems. *The character of the land tenure relationship—the distribution of rights and responsibilities between the farmer and the land trust—is actually determined by the details of the land use agreements, more than the placement of the title and the types of legal instruments used.*

Despite the growing interest in farmland preservation between both kinds of land trusts, many still have limited experience and the negotiation of terms will be a learning experience for all concerned. The relationship between a farmer and a land trust is a very important and long-lasting one; it may take time and patience to develop. Look at your local land trust's stated purposes and history of program activity, its board of directors and membership, its legal and financial condition and its management systems. Make sure that it is a sincere, competent, active organization—and then make the effort to build an effective working relationship, turning to others for examples and assistance along the way.

It is usually much better to persevere with an existing trust than to try to create a new one for a single purpose or property. The requirements of organizational development and management are often underestimated and, unless the new entity has a sufficiently broad and capable membership, it will have a difficult time fulfilling the responsibilities of genuine land stewardship. If there is no local land trust in your area, or it is simply not possible to work with the existing group at this time, you might utilize a regional or national organization with similar purposes as an interim steward.

Balancing Individual and Community Interests

Most of us are accustomed to regarding property as a legal formulation or a market calculation, but it is more helpful to envision it as a web of relationships. The leases, easements, and other documents used to secure land for CSA farms should carefully define and equitably balance the legitimate interests of all of the involved or affected parties.

There is no single 'right way' to do this, and the law is quite flexible. In most cases, you can strike whatever balance seems fairest to you and your partners. A simple exercise might be useful in making this determination. Do it alone, with your core group of farm members, and with your land trust partner. Don't be intimidated by the legal or financial implications of the exercise; rather, treat it as a creative educational and social experience.

Thinking of the land that you hope to acquire—its natural features, potential uses, and carrying capacities—make a grid. (See figure below.) On one side, list all of the interested parties. They may have different kinds of interests and different levels of interest, but they have

some legitimate interest in that land, You will find that they can be grouped into four categories; one or more individuals who personally use the land for residence, farming, or some other purposes; the community in the form of abutting neighbors, local government, and the CSA membership; the land itself, and the plants and animals with which you will share it; and the next generation.

	Environmental	Social	Economic
Individuals			
Community			
Land & Wildlife			
Next Generation			

The other set of coordinates will be the three dimensions of property: *environmental, social, and economic*. How should the specific rights and responsibilities in each of these dimensions be distributed among the various interested parties? What land uses should be permitted, required, or prohibited for each? Who should have access, exclusive or shared—and who should participate in governance, in the different kinds of decisions that will be made regarding the land? Who contributes to property value over time, and how should equity be allocated? In all of these areas, think about what you hope to achieve and what else might occur, making provisions for unexpected or even unwelcome contingencies.

With the completed matrix in hand, you will be ready to begin drafting the necessary legal agreements. The resulting documents, in part, will define:

- ◆ **WHO:** the parties to the agreement, including the farmer(s), spouse(s), the land trust, and possibly others;
- ◆ **WHAT:** the land and resources being allocated to or withheld from each party, including boundary lines) timber, mineral and water rights, and specifications for private use, shared use) and perhaps even some public access;
- ◆ **FOR WHAT PURPOSES:** permitted and restricted land uses (residential, agricultural, educational, commercial, etc.) and specific practices;
- ◆ **AT WHAT PRICE:** the amount of the lease fee or purchase price, and the responsibilities for taxes, insurance, maintenance and monitoring;
- ◆ **OWNERSHIP AND IMPROVEMENT:** ownership of the land and ownership of the improvements; the right to make additional investments and improvements; and permitted mortgaging;
- ◆ **TRANSFER:** occupancy requirements; subleasing; provisions for inheritance; and the land trust's option upon sale;
- ◆ **ARBITRATION:** conflict resolution in the event of disagreements between the parties...and more.

Financing the Purchase

The structure of ownership and distribution of property rights will affect the financing possibilities. Remember that charitable or government resources may be used for the acquisition and maintenance of public interests in property, but private property interests must be paid for with private funds.

If you will own the land and a land trust will hold a conservation easement, you will each have to pay your proportionate share of the property value as determined by appraisal. You will pay the restricted "farm value" of the land subject to the terms of the easement; the land trust will pay for the easement. An easement is a real property interest, with a value that is equivalent to the difference between the restricted value and the unrestricted "fair market value" of a property.

On the other hand, if the land will be owned by a land trust and leased to you, it may be acquired by the land trust as a tax-deductible charitable gift, or purchased entirely with gift funds (which you, your farm members, and friends may help the land trust to raise). You will not have to use your personal resources to purchase the property, but you will pay a reasonable lease fee to the land trust for the use of the land over time.

Some CSA farmers have considered restructuring their farms as charitable organizations and a few CSA farms, like Quail Hill Community Farm in Amagansett, NY, are currently operating as programs of nonprofit corporations, with the farmers as employees. But this approach may only be feasible when the organization has a broader array of charitable, educational, or conservation activities. The Internal Revenue Service does not recognize farming, as such) as an exempt activity. In most cases, it will be more appropriate for the CSA program to remain a private enterprise, owned by the farmer or, conceivably, by the members, with the role of a nonprofit partner limited to stewardship of the public interests in the land.

Before seeking financing for land acquisition, you must formulate a realistic, multi-year business plan that details projected income and expenses, anticipates growth) provides for contingencies, and identifies the amount remaining for debt service. On this basis, you may be able to approach conventional lending institutions for a portion of the purchase price. They will require a down payment They may also ask for co-signers or guarantors of the loan, a role that family and friends may be willing to play (perhaps sharing the risk by limiting the amounts of their individual guaranties).

Some states and municipalities have provided loans or grants to land trusts for farm acquisitions, through established programs or special appropriations. Many towns now realize that the cost of preservation is often less than the cost of servicing the development that otherwise occurs. Local foundations, other institutions, and even businesses have also contributed. It's useful to acquaint yourself with these institutions and programs well in advance of your need for funds. Typically, a financing package comes from multiple sources and includes a combination of gifts and loans (and perhaps even proceeds from the sale of partial interests or portions of the land to other parties).

Institutions are not the only potential source of financing for CSA farms. The members themselves—and their friends and associates'—may be your most important financial resource. They are already interested and involved. Presented with a realistic proposal, they may be quite willing to make charitable gifts and socially responsible investments to secure the farm for future generations and to preserve the character and quality of life of the surrounding community.

Charitable gifts from members and friends can go directly to the land trust. If loan capital is sought, however, many investors may prefer to make their loans through a qualified intermediary such as a community development loan fund. The Equity Trust, Inc., a nonprofit organization with an innovative national program of land reform and community development finance, has established *The Fund for Community Supported Agriculture* for just this purpose. Such intermediaries receive loans and gifts from multiple investors and donors. They aggregate the resources, and provide financing for a variety of projects. Investors benefit because the intermediary assumes the responsibilities of analysis, administration, and monitoring, and offers the greater security of its diversified portfolio, loss reserves, and net worth. Borrowers benefit because they are able to deal with a single lender, one with experience, technical assistance capabilities, and additional capital if needed.

Setting an Example

A growing number of CSA farmers are following the paths outlined above, breaking new ground and enlarging the opportunities for others as they go. Stephen and Gloria Decater had been farming for nearly twenty years—initially as market gardeners and then as Live Power Community Farm, California's oldest continuously operating example of CSA—when they realized in 1991 that they had to purchase the land. Throughout this period, it had generously been made available to them by Richard Wilson, a sympathetic landowner and rancher, who is now also the Director of the California Department of Forestry and Fire Protection. But with the need for substantial investments in the buildings and the eventual prospect of inter-generational transfers, the Decaters felt that the time had come to formally secure their place.

They negotiated a purchase agreement. Like most small farmers, the Decaters couldn't afford to pay the full market value with only farm income. So they turned to their core group of members for assistance and began to explore their options. After two years of research and interviews with farmland preservation groups around the country, they decided together that the Decaters would personally obtain financing for the agricultural value of the property, while members and others made charitable gifts for the purchase of an easement by a land trust.

As they discussed their mutual goals, these farmers and members realized that a conventional conservation easement would not be good enough. In a newsletter report to the general membership, Stephen said:

“Socially and ecologically responsible agriculture also requires socially and economically responsible land ownership. If equity and stewardship of the land are shared by the community and the individual farmer, we can ensure that the land will remain in farming use and permanently affordable to farmers.”

With the help of attorneys and other advisors, they crafted an easement and purchase option for the land trust that not only provides for environmental protection) but requires that the land be continually farmed, by resident farmers, using sustainable methods. It also limits the price, when it transfers from one farmer to the next, to no more than the productive farm value. On this basis, two appraisals were made: the fair market value of Live Power Community Farm was \$150,000, but the restricted value of the land, subject to this easement, was only \$69,600.

The unusual provisions of the easement substantially increased the amount of charitable funds that could be applied to the purchase of Live Power Community Farm. Covelo, CA,

already has large-lot zoning. A conventional conservation easement, restricting development but leaving open the possibility of future sales to estate or second-home buyers, would have had relatively little impact on the appraisal. But dedicating the property to agriculture and limiting the transfer price removed all of the speculative element and made the land affordable for the Decaters and future generations of farmers.

In a remarkable effort, the members and friends of Live Power Community Farm succeeded in raising \$90,000. Of this amount, \$81,000, representing the difference between the full market value and the "farm value," was applied to the purchase of the easement itself. The balance was used for legal fees, an environmental baseline' study, and other transaction costs. Yet another hurdle remained. The plan required the participation of a nonprofit partner, but there was no land trust in the immediate area and the nearest one, though appreciative of the Decaters' intent, was hesitant to take on the responsibilities this easement entailed.

At this point, the Decaters turned again to the Equity Trust, which had already been a source of advice. The Equity Trust serves community land trusts and conservation projects across the country, and agreed to play a surrogate "land-banking" role by holding the easement until local stewardship became available.

Finally, in May of 1995, the closing took place. As Richard Wilson said at the celebration:

“Along the way, we learned some lessons that may be relevant for others. It takes patience and fortitude. This work is important social reform and it cuts against the grain of existing expectations and arrangements in the marketplace- [But] this farm is a working example of how sustainable agriculture can succeed. It's an important center of education and training. It's the center of a vibrant community that links Covelo to the city and provides the city with a vital contact to the real world of nature and its limits, and it's the home for a wonderful family who are committed to the land and to this Round Valley.”

Several factors contributed to this achievement. Live Power Community Farm was well established, and the Decaters' personal dedication and abilities were well known. The core group included members with significant legal, financial and fundraising skills, and they were willing to devote a great deal of time. And half of the farm's 140 member families live in San Francisco, one of the most receptive and affluent environments for such an appeal.

Other CSA farms may have more or less difficulty in their own land acquisition and fundraising efforts, but the Live Power experience is not unique. In Hadley, Massachusetts, the Western Massachusetts Food Bank paid off the mortgage on its Food Bank Farm fields in just three years, with charitable gifts. The original price was reduced by the sale of an easement to the Massachusetts Department of Food and Agriculture; the compound of buildings was acquired by a sympathetic philanthropist and leased to the Food Bank and farmers.

Philadelphia Farm, in Osceola, Wisconsin, was also purchased with the help of charitable gifts; Fairview Gardens, in Goleta) California, recently completed its own capital campaign, with the Equity Trust providing intermediary services. In Caledonia, Illinois, Angelic Organics has recruited a group of members to form a holding company and purchase adjoining land, giving the farmer a lease with an option to purchase when he is ready.

Similar principles can be applied to inter-generational transfers as an expression of the owners' dedication, and charitable gift deductions and estate tax benefits may result. Roxbury Farm, in Claverack, New York, has been in the same family for several generations. Two of the current owners' nine children, and one child's spouse, are involved in the CSA operation. After careful consideration and a series of family meetings, the parents decided to transfer the prime agricultural land to the farmers, reserving a small tract of non-agricultural land for each of the other children to enable them to return if they choose, and donating a conservation easement to a local land trust. In this way, they met the needs of each family member and fulfilled their common commitment to the land, the farm, and the well-being of the wider community. Now they are working with the land trust, neighboring owners, and prospective farmers on a broader strategy for land conservation and agricultural revitalization in the area.

Seeds for a Future Harvest

CSA farms like these are defining the principles and perfecting the instruments for a more effective approach to agricultural conservation, for farms of every kind. *The essential element in all of their stones is the willingness of farmers to balance their own personal interests with the common good and to address all three dimensions of property: environmental) social and economic.* While most conservation programs throughout the country, both public and private, are still using tools that protect only the land, these CSA farms are setting a higher standard, as they strive to preserve farmland, family farmers, and rural communities as well. They have taken to heart the warning of Aldo Leopold, a half-century ago, *that "We abuse land because we regard it as a commodity belonging to us," and learned to see it as he described it, "as a community to which we belong."*

Along the way, these CSA farmers and members are educating and inspiring others, discovering allies, and foiling new partnerships. The Vermont Land Trust, a national leader in the conservation field, is now experimenting with 'shared equity' models for family farms, and the Commonwealth of Massachusetts has revised the easements used in its Agricultural Preservation Restriction program to require continuing agricultural use. The quasi-public Vermont Housing and Conservation Board (VHCB) holds a statutory right-of-refusal on any farm that has received property tax considerations or other state subsidies, before it can be sold to a non-farmer and removed from production. VHCB also provides financing to local land trusts through a fund capitalized by legislative appropriations. In pursuit of environmental and social goals, CSA farmers and members can join with a great many others in a combination of individual initiatives, local organizing and institutional development, and public policy reforms.

Significantly, the relevance of these efforts goes well beyond rural America, for land is not only essential to farmers. It is the foundation for virtually all social and economic activity. Some of the same market forces that are keeping prospective farmers from the land affect urban areas as well, where community land trusts in cities large and small are responding to the needs for affordable housing) open space, and facilities for small businesses and human services. In Boston, MA, the Dudley Neighbors CLT is engaged in an ambitious, integrated program combining urban agriculture with residential and commercial development. Land has been allocated for food production and youth employment; a newly created 'neighborhood commons' hosts a weekly farmers market; and planning is underway for construction of a large commercial greenhouse.

In communities of every kind, issues of land use and property rights are fundamental-and they are also controversial. In national, state, and local arenas, they stand at the center of the political stage as the focus of highly polarized debates. Unfortunately, public and private interests are often portrayed as distinct and even antagonistic; arguments are simplistic, and constructive alternatives are lacking. Although we define the word "equity" both as a financial interest in property and as a moral principle of fairness, all too often it seems that the necessary relationship between the two has been forgotten.

"Land reform" may be a foreign concept to most Americans, but our need for it is real and growing. Here and abroad, we are confronted with expanding populations, resources limited by supply or the costs and consequences of extraction, and a universal demand for inclusion. The conclusion is inescapable, even if the path is still unclear. All human beings need food, shelter, meaningful work, and recognition of their importance to the community-and all of these are dependent upon good stewardship and equitable distribution of the land.

With creativity, commitment) and community participation, the CSA farmers of today can provide a legacy of secure, productive, and affordable land for the farmers of tomorrow—and make vital contributions to the larger process of social and economic reform. The ultimate success of Community Supported Agriculture depends upon it and many others will benefit as well. We are facing a formidable challenge, to be sure, but it is also a remarkable opportunity, a practical possibility, and even a sacred trust.