

Farmland for All

Buy-protect-sell pilot program process

About Ag + Open Space

Ag + Open Space permanently protects the diverse agricultural, natural resource, and scenic open space lands of Sonoma County for future generations. We are responsible for the perpetual protection of more than 125,000 acres of land, with an estimated 39,000 acres of that land supporting an active farm or ranch operation. The vast majority of these lands are in private ownership, and are protected by a conservation easement held by Ag + Open Space. A quarter-cent sales tax approved by voters in 1990 and reauthorized in 2006 provides funding for the protection of these agricultural and open space lands. For more information, please visit www.sonomaopenspace.org.

In support of the Sonoma County community's vision, Ag + Open Space is guided by the [Vital Lands Initiative](#), a long-range comprehensive plan to prioritize our land conservation activities through 2031. The plan was developed with the best available science and data, as well as extensive input from Ag + Open Space partners and the community, to ensure that the document reflects the knowledge and expertise of stakeholders and the land conservation goals of Sonoma County voters.

The Farmland for All Program

In order to forward the goals of the Vital Lands Initiative and in response to the input of our agricultural community stakeholders, Ag + Open Space is developing a "Farmland for All" program. The Farmland for All program will be a toolkit composed of multiple tools and strategies focused on enhancing equitable access to agricultural land for agricultural producers. This will supplement our long-standing agricultural conservation easement program.

In line with Ag + Open Space's mission to permanently protect the diverse agricultural, natural resource, and scenic open space lands of Sonoma County for future generations, the goals of the Farmland for All Program are:

1. Prevent conversion of agricultural land to non-agricultural uses through tools such as conservation easements and covenants on agricultural land which permanently restrict non-agricultural development, protect the land's agricultural values, and in certain cases require agricultural production.
2. Preserve the agricultural conservation values of the land by supporting responsible stewardship of land via stable land tenure and best management practices.
3. Increase access to agricultural land now and in the future by reducing the price of agricultural land via conservation easements which remove non-agricultural development rights, and via easement enhancements such as agricultural conservation covenants.
4. Increase access to agricultural land for agricultural producers by proactively connecting producers with access opportunities.
5. Enhance equitable access to agricultural land and expand conservation programs to racially and culturally diverse communities.

6. Support local food security by ensuring that land remains in productive agricultural use.

The Farmland for All toolkit will add to and enhance the tools that Ag + Open Space uses to conserve agricultural land. While we develop these new tools, we will be continuing, and expanding, our ongoing agricultural land conservation efforts.

The Buy-Protect-Sell Pilot

The “buy-protect-sell” program pilot described in this document is the first tool that Ag + Open Space is developing for the Farmland for All toolkit. Via a buy-protect-sell transaction, Ag + Open Space will seek out and purchase a farm or ranch from a willing seller, protect it with a conservation easement, and sell the land to a qualified buyer. As part of the buy-protect-sell pilot, Ag + Open Space will also explore the use of an affirmative agricultural conservation covenant requiring ongoing ag use and an affordability covenant designed to maintain the property’s affordability for agricultural producers. The easement and covenants may reduce the property’s appraised value, potentially making it more affordable for agricultural producers.

Ag + Open Space selected the buy-protect-sell model as the first tool to be piloted under the Farmland for All program based on a range of stakeholder consultation. This includes the [Land Access and Land Tenure](#) study, which was prepared in partnership with Sustainable Agriculture Education (SAGE) and the University of California Cooperative Extension (UCCE) to inform Ag + Open Space about the needs of limited resource farmers; and to make recommendations for actions that Ag + Open Space and others can take to support equitable land access, secure land tenure, and associated farm business viability. Stakeholder input showed that, while there is no one-size-fits-all approach to agricultural land access, a path toward permanent land ownership is a high priority for many farmers and ranchers. Land ownership provides long-term stability, allowing agricultural producers to make investments in soil health, infrastructure, and other features of a property that they would not be able to under a short-term land access arrangement such as an annual lease. Land ownership also provides agricultural producers with fuller control over decision-making regarding land use, and an opportunity to build long-term viability. This transaction model is also aligned with Ag + Open Space’s preferred path to land protection, which is to hold and steward conservation easements over properties, without incurring the costs associated with owning and managing the land.

The high price of land is the greatest barrier to land ownership for most farmers and ranchers who would like to own land, with identifying appropriate properties a secondary challenge. The use of Ag + Open Space’s primary conservation tool, the conservation easement, can reduce the appraised market value of some properties, leading to greater affordability. The use of easement enhancements, such as affirmative agricultural use covenants and affordability covenants, may further reduce a property’s appraised value. Ag + Open Space also has significant experience identifying and assessing properties throughout Sonoma County, enabling us to identify existing properties which meet the needs of typical agricultural land seekers.

The buy-protect-sell pilot process will consist of the following steps, each of which is described in more detail in the sections below. These steps could be combined and ordered in multiple ways and may overlap. For example, Ag + Open Space might purchase a property before identifying a specific qualified buyer for that property. However, it is also possible that Ag + Open Space would work with a landowner who would be open to maintaining ownership of their property until Ag + Open Space had completed selection of a new buyer, allowing for a simultaneous transaction. The steps include:

- Identify pool of qualified buyers
- Identify high-priority property

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- Purchase property
- Design permanent protections for property
- Select buyer for specific property
- Sell property, subject to conservation easement and appropriate enhancements
- Monitor property in perpetuity

1. Identify pool of qualified buyers

Before beginning the selection of a buyer for a specific property, Ag + Open space will develop a pool of qualified buyers who meet a minimum threshold of required experience. Applicants will complete a simple initial application which will assess their experience and qualifications. This initial application will not be tied to any specific property. A Buyer Assessment Committee consisting of Ag + Open Space staff and representatives of expert organizations and stakeholder groups will review the applications and will screen applicants based on whether they meet the required threshold.

Qualified buyers may also be asked to anonymously share their preferences for property type (such as size, location, or existing infrastructure) in order to help Ag + Open Space refine our selection of a suitable property. All qualified buyers will be invited to participate in subsequent stages of the application process regardless of the property preferences they initially express.

The application will be available in print and online via the Ag + Open Space website in English and Spanish. Ag + Open Space will work to provide translation into other languages as needed.

Support for applicants

Ag + Open Space staff will offer support to all applicants as they complete the initial application. Support will be available in English and Spanish, as well as other languages as possible.

Eligibility and authorization

Eligible applicants may be any type of legal entity qualified to hold land. Applicants could include individuals, nonprofits, LLCs, cooperatives, or tribes. Applicants, such as non-profits or businesses, who are organized as corporations (rather than individuals) must have a clear organizational and decision-making structure and must demonstrate that the application is prepared and authorized consistent with corporate governance.

All corporate or other non-individual applicants must submit a formal board resolution or other formal statement issued by their governing body authorizing their application. They must also provide copies of current bylaws, operating agreements, and other governance documents as requested by Ag + Open Space in order to inspect their corporate management structure.

Minimum qualifications

For the pilot of the buy-protect-sell tool, we believe that operators with moderate to significant experience with farming or ranching will have the greatest likelihood of establishing and/or supporting long-term successful farm business(es) on a property, thus fulfilling the program goals.

Therefore, to enter the qualified buyer pool, applicants must demonstrate knowledge and experience sufficient to successfully operate a farm or ranch property. This would typically consist of a minimum of 5 years of relevant experience, which might include farmworker experience/farm employment, farm or ranch management or operation, farm incubator training, farm apprenticeship, Indigenous land management

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experience, living and/or working on a family farm or ranch, FFA or 4-H experience, small business management, or other similar experience. Applicants will have the opportunity to explain how their lived experience, qualifications, and/or education are relevant and how what they have learned from it will apply to this opportunity.

Applicants **are not** required to own, or have owned in the past, their own property or farm business.

2. Identify high-priority property

Ag + Open Space will begin piloting the buy-protect-sell program by purchasing and selling one property. Ag + Open Space will find and select a property whose conservation will support Ag + Open Space's mission, including by forwarding the Farmland for All program goals listed above. The property will be identified based on the needs of farmers and ranchers seeking land, as explored through the *Land Access and Land Tenure* study and other stakeholder input. Ag + Open Space aims to carry out this pilot during 2024-2025.

According to a range of research and consultation conducted to better understand the needs of the Sonoma County ag community, many ag land seekers in Sonoma County, especially those who face greater barriers to land ownership, are seeking smaller properties. Therefore, the initial pilot of buy-protect-sell will focus on relatively small agricultural properties with approximately 5-50 acres of productive area. These smaller properties may be more affordable to purchase and operate than larger ag properties. We believe these types of properties thus have the potential to provide better opportunities to enhance equitable land access. Protecting smaller properties through buy-protect-sell will also help Ag + Open Space diversify our overall portfolio of protected agricultural lands and support a diversity of agricultural products, crops, and practices.

Properties must have the following characteristics:

- Willing seller and clear title
- Appropriate zoning
- Legal access to property
- Agricultural use on the property will not harm sensitive species or habitats
- Resilience to current and expected future extreme weather conditions
- Appropriate soils and water access to support a successful agricultural operation
- No known environmental contamination

Properties with a higher number of the following characteristics will be preferred:

- Protection supports other conservation goals and priorities in addition to agricultural protection as identified in the Vital Lands Initiative
- High risk of conversion to non-agricultural use
- Appropriate size (approximately 5-50 acres of productive agricultural area)
- Appropriate location (within an approximately 30-minute drive from market opportunities and near other agricultural properties)
- Topography is flat or with minor hills
- High-quality agricultural soils
- Agricultural infrastructure, housing, and utilities are present
- Agricultural production on property could provide community benefits, for example by providing accessible fresh produce to a nearby community

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As noted above, we may request anonymous input from qualified applicants regarding their property preferences. This input may be used to further refine property selection, for example by informing the relative importance of the existing criteria or adding additional criteria. We may also ask qualified applicants to anonymously comment on potential properties to gauge interest in their purchase. The purpose of these inquiries will be to reduce the risk that Ag + Open Space purchases a property that does not fit the needs of any of the applicants who are at that time engaged in the process. All qualified applicants will have the opportunity to participate in the application process for the selected property regardless of their stated property preferences.

3. Purchase property

Once a property is determined to meet the buy-protect-sell pilot criteria described above, Ag + Open Space will work to carry out due diligence and to develop and sign a purchase and sale agreement with the landowner, conditional on approval by the Ag + Open Space Board of Directors and other conditions as appropriate.

Ag + Open Space will contract with an independent appraiser to determine the proposed purchase price of the property. As a government agency, Ag + Open Space is bound by legal and ethical obligations to judiciously spend taxpayer money and cannot pay more than fair market value for a property. The fair market value will be established via an independent appraisal that meets Ag + Open Space appraisal guidelines and USPAP standards. Appraisals are also subject to approval by the Ag + Open Space Fiscal Oversight Commission and all purchases are contingent on final approval from the Board of Directors.

Once Ag + Open Space has concluded its due diligence and all of the purchase and sale agreement conditions are met, the property will be sold to Ag + Open Space.

In the case of a sequential transaction, Ag + Open Space will then own the property until it can be sold to a qualified buyer. Alternatively, the existing landowner may be willing to hold the property until Ag + Open Space identifies a qualified buyer, and the property will be both bought and sold in a simultaneous transaction.

4. Design permanent protections for property

Ag + Open Space will develop a conservation easement, an agricultural conservation covenant, and an affordability covenant for the property. These restrictions may lower the appraised value of the property, potentially making the land more affordable, and will also ensure that the property will remain in productive agriculture for generations to come.

Conservation easement

An Ag + Open Space conservation easement is a legal agreement between a landowner and Ag + Open Space that permanently limits uses of the land in order to protect its agricultural, scenic, natural, and/or open space conservation values. Each conservation easement is tailored to a specific property. It allows landowners to continue to own and use their land, and to sell the property or pass it along to their heirs. Subsequent owners are also bound by the terms of the conservation easement, thus preserving the land in perpetuity – in other words, forever.

Agricultural conservation easements typically allow the uses necessary to maintain a viable ag operation, while limiting development and alteration of natural features or habitat on the property. Some activities on the property may require advance notice to or approval from Ag + Open Space, to ensure that they are

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carried out in a way that is consistent with the terms of the conservation easement. Conservation easements also typically prohibit subdivision of the property.

Agricultural conservation covenant

As part of buy-protect-sell, we are also piloting the expanded use of an agricultural conservation covenant (ag covenant), which affirmatively requires that the property remain in continued agricultural use. While a conservation easement typically sets forth what a landowner cannot do on the land, an affirmative covenant describes what a landowner must do on the land. With the smaller size of property which this pilot program will focus on, although the risk of subdivision and further development is low, the risk of agricultural land falling out of production is high because these properties are often attractive as estate homes or “ranchettes” that lack significant agricultural production. An ag covenant will ensure that properties that we protect for agricultural use will remain in productive agricultural use and that our community will receive the benefits of ongoing agricultural use on the property.

Like a conservation easement, each ag covenant is tailored to the specific characteristics of a given property. For the buy-protect-sell pilot, the ag covenant will be designed to balance the goals of the Farmland for All program with sufficient flexibility to ensure that landowners can respond to changing conditions, both on- and off-farm.

Below is an overview of the covenant terms that will be used for the Farmland for All buy-protect-sell pilot.

Minimum agricultural use requirement:

- The landowner will be required to keep a minimum amount of the property in “Agricultural Use” at any given time. Generally, this minimum amount would be 75% of the agricultural area of each property. The agricultural area is defined as the area of the property suitable for agricultural production that does not contain sensitive natural resources or residential infrastructure.
- “Agricultural Use” means that the land is managed for agricultural production. This includes a wide variety of agriculture, including livestock, bees, fish, poultry and other fowl, and all types of legal crops permitted by the conservation easement.

Determining compliance:

- Compliance will be based on a 3-year rolling average. The owner will be required to keep records demonstrating compliance and allow Ag + Open Space to review them at any time.
- If the owner wishes to reduce or pause agricultural production for a certain period in order to support improved soil health, they may develop a plan for how a rest period will contribute to soil health and request a soil health waiver to waive these obligations for a limited period of time.
- If the owner cannot meet the requirements for a limited period (for example due to illness), they may request a hardship waiver to be excused from these requirements for up to 3 years.
- If the owner is unable or unwilling to meet these requirements for a longer period, they may lease the property to one or more qualified tenants to do so. If the landowner does not find tenants to fulfill the requirements, Ag + Open Space may exercise a recorded option to lease the property. This means that Ag + Open Space will, following notice to the landowner, have the right to lease the land, and then identify appropriate tenants to keep the land in agriculture as subtenants to Ag + Open Space.

Crop type restrictions:

- In some circumstances, Ag + Open Space may apply, as part of the ag covenant or conservation easement, restrictions on the type of products which may be produced on the property. For

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example, the ag covenant might require that a minimum percentage of the agricultural area be devoted to food crop production, or set a maximum percentage of the agricultural area which could be devoted to any one crop. Understanding that such crop limitations can impact a producer's options for economic viability, such restrictions are intended for use in special circumstances related to soil health, sensitive habitats, water, and/or affordability of the property.

Affordability covenant

Ag + Open Space will also apply an affordability covenant to the property protected through this pilot. This covenant will aim to forward the goal of enhancing equitable access to land by improving its affordability for subsequent sales. The restrictions in this covenant may also provide an affordability benefit for the initial sale by reducing the appraised value for that sale as well.

The primary component of the affordability covenant will be a restriction on the maximum future price of the property in subsequent sales. Ag + Open Space is still determining how this restriction will be set; similar tools have set forth methods of defining a maximum sale price based on an inflation index or a percentage increase relative to the initial sale price, appraised price based on ag income, or other approaches. Ag + Open Space also plans to explore how to balance maximizing the affordability benefits of such resale restrictions with ensuring landowners are incentivized to invest in improving and maintaining the property and its infrastructure, with a possible approach being to exclude investments made by the landowner from such a resale price cap, in a model similar to that of a community housing trust.

The affordability covenant will also establish minimum qualifications for future buyers, in order to ensure to the extent possible that these affordability benefits continue to be accessed by agricultural producers. Ag + Open Space will aim to determine whether a prospective buyer may reasonably be expected to operate the property themselves in compliance with the terms of the Agricultural Conservation Covenant and all other deed restrictions. To make this determination, Ag + Open Space may assess the qualifications and experience of prospective buyers, which may include requiring prospective buyers to submit verifiable information regarding their sources of income to assess whether they are in the business of farming.

5. Select buyer for specific property

Ag + Open Space will identify a specific buyer for the property via a proposal assessment process. All entities and individuals who have been accepted into the qualified buyer pool will be invited to participate. The goal will be to identify a long-term owner who demonstrates strong potential to develop or support a successful agricultural operation(s) on the property, and whose vision for land management and community engagement aligns with program goals. Applicants will be assessed at each stage of the proposal assessment process by a Buyer Assessment Committee consisting of Ag + Open Space staff and representatives of expert organizations and stakeholder groups.

To begin this process, all applicants in the qualified buyer pool will be given information about the property available for purchase, including a preliminary title report, water and soil information, and infrastructure list; and the terms and conditions of the sale, including the purchase and sale agreement, sale price, conservation easement, agricultural conservation covenant, and affordability covenant. To maintain the fairness and integrity of the program for all applicants, the conservation easement, agricultural conservation covenant, affordability covenant, and any other contracts with Ag + Open Space **will not be subject to negotiation**. Interested applicants will need to review them very carefully and will be encouraged to ask questions before investing further in the process. Applicants will be required to sign an acknowledgement of the terms of these documents.

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Interested applicants will be invited to attend a mandatory farm visit. Following the farm visit, applicants will be invited to submit a property-specific proposal describing their farm business plan and vision for management of the property. The Buyer Assessment Committee will review the proposals. The Committee will then conduct one or more rounds of interviews with top candidates.

The Committee will assess each applicant's:

- **Qualifications:** Experience and skills related to farm or ranch operation or management; business operation or management; marketing; community engagement; knowledge of Sonoma County's local market, regulatory, and other conditions; and other relevant areas over and above the required minimum qualifications.
- **Vision:** A plan to manage the property in a manner consistent with its features and productive capacity, with a strong potential for long-term success. Provision of other community benefits is a plus.
- **Readiness:** A plan to access the capital, equipment, inputs, and other resources necessary to purchase and operate the property. If comparing between otherwise similarly qualified candidates, candidates who can be financially ready to buy the property within a shorter time frame will be preferred.
- **Other characteristics:** Other characteristics of the applicant which are important to achieving the program goals, but do not fall into the other categories. For example, whether the applicant resides or works in a disadvantaged community, whether the applicant has experience as a farmworker, and what motivations or needs led the applicant to apply to the program.

The Committee will make a recommendation to Ag + Open Space regarding which applicant(s) are best qualified to own and operate the property. If, after the proposal assessment process and the interview(s), multiple qualified and competitive applicants are identified, final selection will be made via a lottery that will be administered in an open meeting.

Before the land can be sold to the selected buyer, Ag + Open Space's Board of Directors must approve the buyer, the conservation easement and covenant terms, and the sale price. Following approval by the Board of Directors, Ag + Open Space will execute the purchase and sale agreement (PSA) with the selected applicant, and will proceed to sell the property to the selected applicant in accordance with the PSA.

Support for applicants

Support will be available to all applicants as they participate in the application process. As the pilot progresses, Ag + Open Space will investigate the needs of applicants and will identify resources and support that are responsive to these needs. This support may include working with partners and local experts to provide educational workshops to help applicants navigate the stages of the application process. Support will be made available in both English and Spanish to the extent possible, and it may be possible to provide help in other languages as needed.

6. Sell property to selected buyer, subject to conservation easement and appropriate enhancements

Ag + Open Space will sell the property, subject to the conservation easement, agricultural conservation covenant, and affordability covenant, to the selected buyer for the property's appraised value, pursuant to the terms and conditions of the purchase and sale agreement made available to all applicants at the beginning of the selection process. In some cases Ag + Open Space may conduct a simultaneous transaction,

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in which the original owner continues to own the land until Ag + Open Space has selected a buyer, allowing us to purchase the property and sell it, subject to the conservation easement and covenants, on the same day. In other cases, Ag + Open Space may purchase the property and hold fee title temporarily until a qualified buyer is selected.

Once Ag + Open Space's Board of Directors has approved the buyer, the terms in the conservation easement and covenants, and the sale price, Ag + Open Space will open an escrow account with a title company where it will receive the funds from the buyer. Closing will occur as soon as possible, consistent with the purchase and sale agreement, which will require a minimum of 35 days between the Board decision and closing. Ag + Open Space will pay for the closing costs; the new buyer will be responsible for the cost of obtaining title insurance. The cost of title insurance varies based on the level of coverage received, but is typically about 1% of the purchase price.

7. Monitor property in Perpetuity

Ag + Open Space will monitor compliance with the conservation easement and affirmative agricultural covenant in perpetuity. Ag + Open Space monitors all conservation easements every 12 to 18 months in order to ensure that conservation values remain protected. Some activities on the property may require advance notice to or approval from Ag + Open Space, to ensure that they are carried out in a way that is consistent with the terms of the conservation easement. An affirmative agricultural conservation covenant will additionally require the landowner to keep records demonstrating compliance, and allow Ag + Open Space to review them at any time.

Ag + Open space strives to develop a partnership with our easement landowners, collaborating to support them as they address goals and challenges on their property, maintain and enhance the property's conservation values, and otherwise manage and use the property consistent with the conservation easement and covenant. For example, Ag + Open Space works to alert our easement landowners to technical assistance and funding opportunities, and connect landowners with existing resources and support organizations.