

What is a conservation easement? A conservation easement (CE) is a deed restriction placed voluntarily by a landowner on a property to protect its natural resources. In some states, easements are called "restrictions." The landowner still owns the land and all other rights associated with ownership. Land with an easement is typically referred to as "protected" or "conserved" and most easements are perpetual. A CE can be written in many different ways, depending on what natural resources it is designed to protect. A CE may allow agriculture but may also restrict or limit farming practices and infrastructure.

What is an agricultural conservation easement?

An agricultural conservation easement (ACE) is a type of CE specifically designed to protect farmland from development and other uses incompatible with agriculture while allowing use of the land for farming. An ACE is typically more farm-friendly than a CE that is written to protect land for multiple purposes; it may, however, still limit or prescribe certain activities. Some ACEs also have resale restrictions (or "affordability" clauses) limiting the sales price of the protected land to its agricultural value (*see h. below*) and/or may require that the land be actively farmed.

Selling or donating a conservation easement.

CEs can be donated, usually to a nonprofit land trust, or sold to a public agency or qualified conservation organization through a Purchase of Agricultural Conservation Easements (PACE) program. The entity that "holds" the easement must ensure that the landowner complies with the easement terms. Land protected with a CE can be sold or rented. The easement "runs with the land," meaning that all future landowners, as well as anyone leasing the land, must abide by the easement's conditions.

Conservation easements and beginning farmers.

A CE can be a valuable tool to access land. Protected farmland is typically more affordable to purchase. Alternatively, depending on location and funding, beginning farmers may be able to combine a farmland

purchase with a simultaneous sale of an ACE, helping to reduce the initial cost of land ownership. Protected land also can offer a more secure rental arrangement. It is important to understand the type of CE on the land and what's in it. Be sure the easement is compatible with your farming plans!

Key CE considerations for beginning farmers.

Evaluating CE terms and ensuring a good fit with your needs are critical. Some key terms to consider:

- Purpose.** Every CE specifies the purpose(s) for which the land is being protected. An ACE will state clearly that protection of the land's agricultural soils for future agricultural use is the *primary* purpose of the easement, with any other purposes listed as secondary. CEs with other equal conservation purposes (such as protection of habitat or scenic views) can be problematic if the easement holder finds certain farming practices or agricultural infrastructure to be inconsistent with those other purposes.
- Definition of agriculture.** Most CEs define agriculture under "permitted uses," "retained rights" or in a definitions section. Be sure to read this section and other definitions carefully, as they may restrict certain agricultural practices or activities, such as the amount of off-farm products that you can sell or process on your farm.

(more →)

Resources

Farmland Information Center
(www.farmlandinfo.org)

- *Agricultural Conservation Easements* fact sheet
- *Drafting Conservation Easements for Agriculture*

National Young Farmers Coalition
(www.youngfarmers.org)

- *Finding Farmland: A Farmer's Guide to Working with Land Trusts*

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- c. **Agricultural practices.** Some CEs require a landowner (or tenant) to farm in conformance with specific management practices and may restrict fertilizer or pesticide use. Others, including most ACEs, require instead that a farmer farm in accordance with an approved conservation plan. The latter approach offers farmers more flexibility to adapt to changing conditions and needs.
- d. **Agricultural infrastructure.** Many CEs impose limits on the type, size and location of farm buildings, with a formal approval process. ACEs tend to be less restrictive; some allow farmers to construct, modify or demolish farm buildings without prior permission from the easement holder. No single approach is best; what's important is adequate flexibility to adjust to evolving farm needs. Look for other restrictions such as on irrigation equipment, high tunnels, all-terrain vehicles, fencing and signs; many multi-purpose CEs restrict this infrastructure.
- e. **Housing.** Most CEs do not allow for construction of residential dwellings. Those that do typically limit them in some way, by number, size and/or location within the easement area. Farm labor housing is sometimes treated differently, as an agricultural structure.
- f. **Ancillary activities or rural enterprises.** Most CEs restrict non-farm enterprises located on the protected land. Some allow a non-farm enterprise so long as it is "ancillary and subordinate" to the farming operation and not inconsistent with the purposes of the easement. Renewable energy projects, such as wind, solar and anaerobic digesters, or other rural enterprises may be allowed under certain circumstances to meet the needs of the farm and generate revenue for a farm family.
- g. **Approvals and amendments.** CEs that require prior approval by the easement holder for a specific activity, enterprise or structure should have a process that is clearly described, with a reasonable timeframe for approval. Most CEs will also have a provision allowing amendments. While amending an easement is often a complicated matter, the ability to do so and adjust for changed circumstances is important.
- h. **Affordability provisions.** Increasingly, some land trusts and state PACE programs are including language in ACEs aimed at keeping protected land affordable and in active production.
- **An option to purchase at agricultural value (OPAV),** sometimes called a preemptive purchase right, is a clause added to an ACE that aims to restrict the resale value of the protected land to its agricultural value. An OPAV gives the easement holder the right to purchase (or assign the right to purchase) the protected farmland at its appraised agricultural value if and when a landowner puts the land up for sale. Depending on how it's written, the OPAV may not apply to certain sales, such as a sale to a family member or to a qualified farmer, and generally allows the easement holder to waive the option. Since the OPAV is an additional restriction, the value of an ACE with an OPAV is typically higher, and the price paid to a landowner for the ACE increases. While the OPAV limits the resale price to agricultural value, making the restricted land more affordable for farmers, the agricultural value may rise over time if there is competition among farmers for the land in the area.
 - **An affirmative covenant to a farm, or affirmative agricultural clause,** is an additional restriction in an ACE that typically requires the landowner to keep the protected land in active agricultural use, either by working it or leasing it. In some cases, if the land is not being actively farmed, the easement holder may have the right to take certain steps to ensure the property is maintained. Like an OPAV, an affirmative covenant typically increases the value of an ACE, reducing the value of the restricted farmland and making the land more affordable for new or established farmers.
- i. **Subdivision.** Many CEs do not allow for future subdivision of protected land. Increasingly, land trusts and state PACE programs are including a right to subdivide farmland in the future under certain conditions, recognizing that smaller parcel sizes are sometimes more viable and affordable for new or young farmers.