

# FARMLAND CHANGING HANDS:

## A Study of Innovative Land Transfer Strategies



*Left: Developed Kent Valley in Kent, WA. Right: Farmland preserved by Pierce Conservation District, Puyallup, WA. Photos by: Sarah Wilcox*

November 2011

Written by Kate Dean for Washington FarmLink



**Washington FarmLink** works to connect landowners and land seekers to each other and to resources for finding and transferring farmland. FarmLink is a program of Cascade Harvest Coalition, a non-profit that connects farmers to farmers, markets, and consumers throughout Washington State.

PRODUCED WITH SUPPORT FROM:



United States  
Department of  
Agriculture

National Institute  
of Food and  
Agriculture



Document produced with support from the Outreach and Assistance to Socially Disadvantaged Farmers and Ranchers Program, Beginning Farmer and Rancher Development Program of the National Institute of Food and Agriculture, the Specialty Crop Producer Grant Program, WSU Extension Small Farms Program, and Cascade Harvest Coalition. USDA Grants #2009-39300-20194 and #2009-49400-05978 and WSDA Grant #K351.

## PREFACE

Throughout the history of human settlement and agriculture, the ways in which land is owned (“tenure”) or used by others (“tenancy”) has evolved and adapted. Land tenure is a fluid concept, remarkably so considering the importance it carries in determining class structures, accumulation of wealth, systems of employment and myriad other social, environmental and economic factors. A few examples of ways that land has been held historically include feudalism, the British “commons”, sharecropping, fee simple ownership, and leases, all of which have evolved over hundreds of years. With each land tenure model comes the disparity of the “haves” and the “have nots”, the challenge of how to eke a living out of the land, and the notion that land ownership is equated with wealth and power. But perhaps the most consistent quality of farmers and the land they cultivate is this: the desire to add labor and resources to a piece of ground, produce a viable crop, and gain security from their stewardship for years to come.

Though the desire is simple, achieving it is not. Modern land tenure is rife with impediments. The system of valuing property based on the “highest and best use” (aka development value) drives the speculative value of easy-to-develop, prime farmland higher and higher. Consolidation in agribusiness has fewer people farming larger acreage and still struggling to make a profit. Mini-estates divide up rural, picturesque landscapes into smaller pieces, never to return to farming. Environmental and conservation efforts, aimed at preserving what is left of limited, critical resources, impacts intact farmlands in disproportionate and unintended ways. The dream of securing and working a plot of good soil is increasingly out of reach for most Americans, a reality that is especially worrisome in the face of a growing interest in food and farming by the current generation of young adults.

But just as history has seen land tenure evolve, we are currently faced with another opportunity to “rewrite the rules.” Changing rural demographics will result in an estimated 70 % of US farmland changing hands in the next 20 years. How this land is transferred, to whom it is passed or sold, and at what price all have major ramifications for land use, food production and rural livelihood. Instead of selling prime lands off to the highest bidder, communities need to create and replicate models of land transfer, tenancy and ownership that value rural economic development, local food production and environmental stewardship while ensuring affordable entry and secure retirement for farmers.

This guide highlights projects and strategies that attempt to meet these lofty goals. May it inspire the innovation, partnership and determination necessary to breed the next generation of farmers.

Kate Dean

July 2011

## HOW TO USE THIS GUIDE

This guide is divided into ten innovative land transfer strategies, with a corresponding case study/example of a farm that has employed it to their advantage. (Note: that it does not cover standard purchase).

For each innovative strategy, the following questions will answered:

- **Who is involved? Many of these deals will involve a number of players. The likely ones will be listed.**
- **How does it work? The common scenario will be outlined.**
- **What are the relative costs and how might they be funded? Strategies require vastly different levels of investment up front. Is this strategy realistic for a beginning farmer with little equity? Who pays for what in this deal? Where might investment/ funding come from?**
- **What are the benefits and challenges? There will be advantages and drawbacks to each strategy discussed.**
- **What resources support this work? Lists organizations and links to websites where you can go to learn more.**

The ten strategies are followed by policy discussion and recommendations that can assist this work in being available and implement-able in communities far and wide.

Lastly, a glossary is provided to define the particular terms used in land transfer.

The most important instruction in the use of this booklet is this:

Use this guide to inspire new ways of thinking about creative land transfer. The strategies within are examples of ways that innovative partners have pieced together a deal that couldn't have happened in a typical land purchase. Just as every farm is unique, so too is the deal that will work for you. Find the right partners, with "can do" attitudes, put on your thinking caps, and get to work forging a deal that meets the needs of everyone involved.

Of course, there are caveats:

This guide is not meant to provide legal advice. Land transfers and leases are likely among the most expensive and important deals you will make. Seek trusted legal counsel before signing binding documents.

Embarking upon the types of land transfer strategies is a long, sometimes slow, process. Be prepared for the need to communicate extensively with the partners involved, and for this communication to sometimes be challenging.

Lastly, the sustainability of any farming enterprise will depend in large part on its financial footing. Securing a land deal, especially one that involves the good will of myriad partners, requires responsible business planning on the part of the farmer.

---

## Table of Contents

Strategy #1: Succession Planning/Gradual Transfer of Ownership.....6

Strategy #2: Farm Purchase with Life Estate Retained.....9

Leases.....11

Strategy #3: Cash Lease.....13

Strategy #4: Ground Lease.....15

Strategy #5: Leasing Land from a Public Entity.....18

Strategy #6: Sale of Conservation Easement or Development Rights.....22

Non-Traditional Lenders & a Quick Lesson in Investment.....26

Strategy #7: Pooled Equity Investment.....28

Strategy #8: Personal Loan with Promissory Note.....30

Strategy #9: Seller “Carrying the Contract”.....31

Where to Look for Financing.....32

Strategy #10: Community Developments with Farms.....33

Strategy #11: Land Linking.....34

Leveling the Farming Field: How Public Policy Affects Entry into Farming.....35

Glossary of Terms.....38

WA FarmLink: <http://www.cascadeharvest.org/programs/washington-farmlink>

Cascade Harvest Coalition, 4649 Sunnyside Ave N, Room 123, Seattle, WA 98103 (206) 632-0606

## STRATEGY #1: SUCCESSION PLANNING/ GRADUAL TRANSFER OF OWNERSHIP

- **Players: Farmer, New farmer taking over, attorney or accountant**
- **Level of Difficulty: Low to moderate**
- **Investment Required of Farmer: High, but gradual**

When we hear about succession planning, what usually comes to mind is passing along a business from parents to their kids. This is certainly a common occurrence in agriculture, and has been for centuries. But as in many facets of the industry, this too is changing.

What if the farmer does not have children? What if the children don't want to farm? What if the farmer doesn't know how to fairly divide up the estate without selling the land? And what if he or she can't stand the thought of selling, only to watch that land get carved into mini-estates? These conundrums are just a few of the reasons a landowner might choose to create a succession plan that controls the transfer of land and/or a business to another entity over a period of time.

While inter-generational succession plans are still the most common, sophisticated tools have been developed to ease transfer to anyone: a relative, a star employee, a non-profit, or another business. Finding expertise in the tax, accounting and legal realms can be the greatest challenge to pulling this off. Look for professionals who have worked with farm family estate planning as many of the tools available were developed for this.

One of the most useful aspects of a succession plan is the ability to transfer ownership over an extended period of time. Typically, this entails the buyer purchasing additional shares of a corporation on a given timeframe. Shares or ownership may also be "purchased" with sweat equity—running or working in the business might equate to additional ownership. In the examples that follow, the sellers were able to take payments over an extended time, providing income in retirement years and experiencing less tax burden from a lump sum sale. And of course the buyer does not need to come up with the purchase price up-front. Additionally, decision-making can transfer from seller to buyer slowly, giving both parties time to transfer information and adjust to their new roles while the parties are working together.

## CASE STUDY: Twin Brook Dairy, Lynden, WA

When your family has been farming the same land for six generations, you learn a thing or two about how to pass it along to the next generation.



*Larry & Debbie Stap and Michelle & Mark Tolsma*

Larry Stap and his wife Debbie run Twin Brook Dairy in Lynden, Washington. In 2006, their daughter Michelle Tolsma and her husband Mark asked if they could join the family business. The family embarked on succession and business planning that would allow both families to be supported by the dairy, as well as provide for Larry and Debbie in retirement. The family hammered out the details, consulted with a financial planner, and then worked with an attorney to write up the plan. Compared with other transfer models, working within the family is often, though not always, simpler and cheaper.

But every old family story has its ironic twist. Larry Stap did not inherit the family farm. His brother took over the farm from their father but eventually decided to sell. Luckily Larry had stayed close to home, buying another dairy in the area, and was able to purchase the family farm in 2001.

The plan drafted by the Stap/Tolsma family is guided by Larry's desire to pass his farm on to the next generation—not his desire to get the most money out of it when he is ready to retire. Good farmland in Whatcom County is prohibitively expensive; though Larry could sell it and

secure a comfortable retirement, his daughter's family could never afford to get started, especially in the dairy industry with its high start-up costs. They were able to draft a plan that allowed the younger generation to buy into the business gradually, and instead of expanding their dairy herd they decided to bottle their own milk and increase the price they get for their milk dramatically. This innovative approach is now supporting two families, with a solid plan to continue doing so for years to come.

Here's how it works: Twin Brook Creamery consists of the business and the real estate as two separate companies. This allowed Michelle and Mike to buy into the business first, separate from the land. This was more affordable and realistic for the time being. They will purchase the land from Larry and Debbie at a later date, therefore providing income for a longer period of time and likely in the parent's retirement years.

Appraising the value of the business was essential in drafting this deal. Larry and Debbie use a "full accrual" accounting method for bookkeeping, which simplified the process and did not require an expensive, professional valuation. As both parties agreed upon the value Larry and Debbie came to, in 2006 Michelle and Mark bought 20% of the business and they purchased an additional 10% annually until their share reached 50%.

Similarly, when it comes time for the Tolsmas to purchase the land, they will do so gradually, financed by the parents, and most importantly, at a price that is reasonable, fair, and can be afforded by the dairy business.

This may seem an obvious point, but as in most succession planning, it is complicated by one factor: siblings. Larry and Debbie have other children, and though they wish to be fair in the allocation of their assets, the farm is going to Michelle and Mark. Selling it to the highest bidder OR asking the Tolsmas to pay what the highest bidder might but it would not honor Larry's desire to pass it on to the next generation. So either Larry and Debbie, or the siblings (in the case of the parents' death) will be bought out of their ownership of the farm and business at a price the dairy can support and with minimal interest rates included in a payment plan. "It's the only way to make it work," says Larry. "It can't be about greed."

Keeping the farm in the family is the way that farmland has been transferred for many generations, but like most aspects of agriculture, this is changing too. Sophisticated tools exist now to assist families in succession planning that are fine-tuned to meet the needs of different types of farm families. Working with financial planners, estate planners and attorneys that understand agricultural estates can facilitate a successful transition plan and save both money and hardship. The Staps are a great example of "Keeping it in the Family"- and making it work!

## STRATEGY #2: FARM PURCHASE WITH LIFE ESTATE RETAINED

- **Players:** Farmer, New farmer taking over, attorney or accountant
- **Level of Difficulty:** Moderate
- **Investment Required of Farmer:** High, but gradual

### CASE STUDY: Island Meadow Farm, Vashon Island, WA



*Island Meadow Farm, Vashon Island, WA*

When Bob and Bonnie Gregson felt that their Island Meadow Farm was becoming too demanding for them to manage in their retirement years, they set out a plan to transfer it to someone with the right skills. They were not ready to sell outright for myriad reasons; they wanted to enjoy the property they had developed, they weren't prepared to move away, and did not want to see their 10-acre farm revert to yet another residential estate on Vashon Island, WA. They wrote a letter to former intern Greg Kruse, who had relocated to Iowa in search of more affordable farmland, and made him an offer he could not refuse.

Greg had fallen in love with Island Meadow and Vashon Island during his long season spent working with the Gregsons. He had also built a strong mutual admiration with them, based in large part on their shared work ethic. Bob and Bonnie saw Greg as the type of young farmer ideally situated to take over their farm and set to work on drafting a deal that would work for both parties.

The Gregsons wished to remain on the farm that they had tended for many years and were familiar with the concept of a "Life Estate"- meaning they retained the right to live on the farm for the rest of their lives, which had two residences on it already. But they found that their attorney and CPA did not have a lot of experience with, or faith in, this concept. They carried on, relying on goodwill with Greg, and drafted a deal that allowed them to stay on the property but still sell it, along with the turnkey business, at approximately half the market value. Because the Gregson's owned the property outright they did not need a bank's blessing on this non-traditional deal. Greg paid them monthly payments while they carried the note, and were able to stay in their home (or rent it out for income as they later did upon deciding to relocate).

For Greg this deal was a dream come true. "After my apprenticeship here in 1998 I would literally fantasize that this could be my place someday," he says now. He was not required to pay a down payment and needed little capital to finance the business that was already going strong with a great reputation. Still he felt the heavy responsibility of ownership; he had a sizable monthly payment to meet as well as having the Gregson's on-site, whom he wanted to do well by. When his wife Julie Thielges, and soon after two sons, appeared on the scene, Greg knew that he was incredibly lucky to have secured a farm on an otherwise unaffordable island.

In 2004 the Gregsons decided to move away and exercised their right to rent their home on the land. This presented a number of challenges for both parties: increased wear and tear on the driveway and property, maintaining the property from afar, and dealing with sometimes unruly neighbors that were not interested in or invested in the farm but living on it. Greg and Julie quickly felt motivated to buy out the life estate from the Gregsons, if and when they were ready.

Again the parties found that little expert advice was available to them to navigate this tricky territory. Placing a value on the life estate that was agreeable to both parties took four years, but in 2009 they were able to make a modification on the Deed of Trust, which accomplished the total transfer to Greg and Julie. The Gregsons continue to carry the note, earning them interest and allowing the Kruses to avoid the vagaries of the current mortgage market.

The Gregsons and the Kruses are both satisfied and grateful for the outcome of this land transfer deal. The goodwill that generated it has persevered to this day, in spite of many years of negotiations and complex financial matters. Their relationship, communication and commitment to the land and one another have been essential to their success. The Gregson's advice to anyone considering a deal like this:

“As in any business, this kind of transaction must be based on good will PLUS good professional analysis of the pros and cons to both parties. Success for both parties will depend on unique circumstances and careful long-term analysis. There is definitely no “one size fits all” characteristic. “

## LEASES

The following three strategies involve a farmer leasing land, though in very different scenarios. Leasing is one of the most common forms of land tenure, and has been for centuries. As much as half of all farmland in the U.S. is managed by someone other than the owner, though the amount is uncertain because many of these arrangements are undocumented. While leases are sometimes “handshake deals” that work for both parties for many years, there are many, many examples of oral agreements falling apart. Getting a lease in writing is paramount to the security of a new farm operation, and protects both parties for the term of the lease. Below are the components that should be considered and/or included in the drafting of a lease.

(NOTE: this is not legal advice, and legal counsel should be sought when drafting a legally binding document. State laws will also affect the parameters of an agreement, including the maximum length of time a lease can in place; learn your state’s requirements before signing any documents.)

1. Identify parties clearly, the landlord and tenant (typically referred to as “lessor” and “lessee” in a lease agreement).
2. Describe the parcel to be leased, and which parts are accessible to the tenant and which are off limits.
3. The term of the lease: How long will the arrangements last?
4. Payment: How much will the tenant pay? Is there a share of crop or profit? Will some work done be assigned a value and deducted from the rent? When and how will payment be made?
5. Termination and renewal: How much notice is needed to terminate the lease and under what circumstances? When will renewal be considered?
6. Improvements: Who will pay for what improvements? When will improvements be made and by whom?
7. Prohibited and allowed uses: What activities can the tenant expressly NOT perform on or to the property? What maintenance MUST be completed and when? What tasks will the landlord perform if the tenant is performing them unsatisfactorily?
8. Exit strategies: How will un-resolvable conflict between the parties be handled? What are the consequences of one party terminating the contract before term?
9. Transferability: Can the tenant re-assign the lease to another farmer? What happens if the landlord dies?

## Best Laid Plans

Even if a lease incorporates the elements listed above, sometimes unforeseen scenarios arrive that challenge a lease. Or in the absence of a lease, these common “pitfalls” are even more likely to arise. These include:

- Neither the tenant farmer nor the landlord wants to pay for costly improvements such as fencing, new well or irrigation system.
- The landlord wants to earn some income from the leased land, but the local rates, as well as what a farmer can afford to pay, is not profitable.
- One or both parties are reluctant to enter a long-term agreement with someone unknown to them or on ground unknown to them. Yet a short-term lease is not conducive to a profitable operation.

Like most aspects of leasing, the above scenarios can be worked through in a good lease, but still require the most important component: COMMUNICATION. Entering a lease agreement is indeed entering a relationship, one that requires transparency, honesty and good will.

Lastly, a good lease agreement will provide mutual benefit for both parties. Nothing undermines a lease arrangement more than either party sensing they are doing the other a favor or are doing too much for the other party. Being clear in your intentions from the start is critical: Is the landlord leasing out land to help a new farmer, or to make money? Is the tenant farmer OK with paying for costly irrigation repairs necessary to keep his crops alive or will he be resentful? Identifying the mutual benefit in a lease arrangement, and communicating as clearly as possible, as often as necessary, will keep many leases from all-too- common pitfalls.

### Resources:

The Leopold Center at Drake University has a handbook entitled, “The Landowner’s Guide to Sustainable Farm Leasing” with thorough legal and practical advice. The site also contains lease templates for a variety of types of leases: <http://sustainablefarmlease.org/>

Iowa State University Extension makes available a wide range of lease templates online:

<http://www.extension.iastate.edu/wright/news/leaseforms.htm>

Ag Lease 101: <http://www.aglease101.org>

## STRATEGY #3: CASH LEASE

- **Players: Farmer (tenant), land owner (landlord)**
- **Level of Difficulty: Moderate**
- **Investment Required of Farmer: Low**

### CASE STUDY: Cedarville Farm, Goshen, WA

Customers are often surprised to learn that Mike and Kim Finger don't own the acreage they farm in Whatcom County. Cedarville Farm has been in production for 23 years, making it one of the most established direct-market, organic farms in the state. But their arrangement, sometimes a written lease, sometimes not, has endured two owners, the exponential growth of the farm and the organic food sector, the booming real estate market and maybe even a couple of misunderstandings. What's the secret to its longevity?

Mike and Kim own 5 acres of land where they live and have raised their family. Across the road lies a large farm, where they have leased 10 acres of prime farmland, adjacent to the Nooksack River, since 1989. They had a written lease the first few years on the farm, but when new owners purchased it "somehow the discussion never came up," says Mike. They operated for over 15 years with a handshake deal, managing to meet the needs of both parties. They met once or twice a year, discussed the previous season on the farm and outlined plans for the coming year, and arranged a payment schedule. This system worked surprisingly well, though Mike is aware of the drawbacks.



*Cedarville Farm, Goshen, WA*

"The real impact of it is not having a very solid situation. We've trusted our landlords and we weren't too worried, and yet it wasn't like we had any security nailed down," he says. And this has translated into a reluctance to invest in much infrastructure on the farm, which has limited the scope of the business. Much of the infrastructure Mike has invested in is movable and/or non-permanent. Some has gone onto their home property.

And yet, the arrangement has worked. Mike and Kim are not buried in debt or facing falling land values in the current economic downturn. They own a home and have invested there. While refinancing in 2010 the bank insisted on seeing a copy of their lease; the Finger's and their landlords drafted and signed a two year agreement effortlessly. As important as a written lease is, it is still secondary to a working relationship. They will soon be renewing the previous lease, this time for 5 to 10 years if Mike has his way.

But the real "glue" to their successful lease arrangement, as Mike sees it, is that there is a real and tangible benefit to the owners beyond a cash payment. Mike has employed his landlords' son for 15 years. He says, "the point is that payment can come in many forms, and trust can be built in many ways besides a cash exchange."

Mike is a strong believer that not everyone needs to own the land they farm. He encourages young farmers to “cut their teeth” on leased land, to make mistakes before being saddled with a mortgage and infrastructure costs. He wishes that he would have purchased his own land years ago, but recognizes that it felt out of reach for him then and does for many other today. And with underutilized farmland available, leasing may be the best, sometimes only, option. “For me, it’s about tenure more than ownership. Sometimes Kim and I look at each other and say, ‘wow- we are lucky.’ To have been on the same land for 23 years, how many farms can say that?”

**Resources:**

Cedarville Farm: <http://www.cedarvillefarm.com/>

## STRATEGY #4: GROUND LEASE

- **Players: Farmer, Land Trust or other land owner**
- **Level of Difficulty: Moderate**
- **Investment Required of Farmer: Relatively high**

How it Works: A farmer leases land from a landowner, which can be a private owner, a non-profit, or a land trust. The lease is different from a traditional lease in that the improvements made by the farmer (lessee) are “owned” by the farmer, and can be transferred or sold. Thus, the farmer retains some of the value of capital improvements made on leased land, overcoming the barrier of losing investment on leased land upon departure.

The Ground Lease is a relative newcomer to the toolbox of farmland transfer and tenure. The concept is used in commercial development and is the basis of residential Community Land Trusts (CLT), where a homeowner has a 99 year lease on the home they “purchase” but the CLT retains ownership of the land the home sits upon. Equity Trust, Inc., a non-profit organization in Massachusetts, has pioneered the use of ground leases as a form of affordable land tenure and transfer since 1995, and provides sample leases on their website, as well as details of the myriad farms they have helped to secure for farmers using this method (see Resources below).

Though any landowner wishing to make land available to a farmer can use a ground lease, it has been used most successfully in conjunction with land trusts, who are able to place a conservation easement on the property to ensure future affordability. The farmer should be in a position to make necessary financial investments. The landowner needs to have secure ownership of the property, and be in a position to honor all aspects of the lease. Ground leases are complicated and should be taken on by parties with reliable track records, good communication skills, some financial security, and shared interests and intentions. This is not a “get rich quick!” strategy, but rather a fair way to lease ground to a farmer while allowing them to retain some of their investment.

The terms of a ground lease are highly variable, but should include all components found in a traditional lease (see Strategy: Leasing), as well as a clear definition of which improvements will be retained by the farmer. The lease can be long-term in nature (as in the 99-year CLT model) or short-term (as in the case study of Red Dog Farm on the next page). Long-term leases create incentive for farmers to invest in infrastructure and improvements that lead to greater economic stability.

The lease should be transferable, to a party agreed upon by both lessor and lessee, so that the improvements may be sold or transferred with it. Provisions should be made for the lessee to purchase the improvements should the lease reach maturity. Limits may be placed on the value of the improvements made, or an appraisal may be performed to assess the value. As in any long-term, complicated lease arrangement, legal counsel should be sought by both parties to ensure proper protections are in place.

### Resources:

Equity Trust Inc.: [www.equitytrust.org](http://www.equitytrust.org)

## CASE STUDY: Red Dog Farm, Chimacum, WA

Karyn Williams was, in 2008, like so many other aspiring farmers—anxious to secure a piece of ground but unable to fathom the high price of farmland combined with start-up costs of a new vegetable operation. She was well trained, having studied Sustainable Agriculture at The Evergreen State College, managed the farm there, and then leased an existing farm in Jefferson County. She had a loyal following at the farmers markets, CSA customers who raved about her “perfect” vegetables, and enough funds to either start a farm or buy one, but likely not both. Karyn considered leaving the area, looking for cheaper pastures elsewhere.

But like so many of the case studies in this guide, the right land became available at the right time and the right people stepped in to make something remarkable happen.

When 20 acres of the historic Chimacum Dairy went up for sale in 2007, Karyn knew that it was time to act. Good soils, great location, access to water, and a manageable size all made this plot highly attractive. Karyn began negotiations on the purchase of the property and researched financing options while putting the finishing touches on her business plan.

At the same time, the Jefferson LandWorks Collaborative had identified both the Chimacum Valley as a priority for farmland preservation, and Karyn Williams as a reliable partner to work to secure land for. The Collaborative, made up of seven organizations working to make working lands in Jefferson County available, affordable and economically viable, stepped in to offer assistance to Karyn.

One Pacific Coast Bank/Craf3 (formerly Shore Bank and Enterprise Cascadia) consulted with Karyn on her business plan and reviewed financing options. Though the numbers looked OK to lenders, it was apparent that Karyn would struggle to make ends meet, once infrastructure costs were calculated. Shore Bank, a founding member of the Collaborative, knew that a farmer struggling to cover infrastructure costs had a hard row to hoe. The loan officer suggested that instead of Karyn buying the property, perhaps a third party should do so, and lease it to her until she was able to purchase. Jefferson Land Trust (JLT), another founding member of the Collaborative, stepped up to the plate, forming an LLC to own and hold property, helping it meet its mission of protecting farmland.

Karyn was initially wary of the proposed deal. She wanted the simplicity and security of owning the land herself, without having to ponder any “hidden agendas” of a third party. But she continued to pursue this option, and through the arduous process of negotiating a lease, came to trust the intentions of JLT and see the benefit of putting her assets to use in developing the property.

The idea of utilizing a ground lease was suggested by the Collaborative as a way to “incentivize” Karyn’s investment on the farm. JLT worked with sample lease documents from Equity Trust Inc. to draft an



*Karen Williams, Red Dog Farm & Sarah Spaeth  
Executive Director of Jefferson Land Trust*

agreement that is, to their knowledge, the only one of its kind being put to use for farmland preservation in the state. Myriad details had to be considered: Who pays for what? What if Karyn needs to leave? What are the repayment terms? What if the septic fails? What happens if somebody is sued? What is considered a transferable improvement and what is simply a duty of a lessee? Transparent communication and brutal honesty were required to hammer out a deal that worked for both sides.



*Karen Williams, Red Dog Farm*

An enormous amount of work was completed before attorneys were brought in. Because this is an uncommon arrangement, the cost associated with legal review was significant. Revisions were requested by both parties, and again agreement was achieved painlessly. “I couldn’t believe how much work JLT did on this lease, and how quickly they did it. I gained a lot of trust in them through that process,” says Karyn, now looking over her 20 acres, complete with barn, greenhouses, farmstand and crops.

The renewable, transferable ground lease that Karyn and JLT ultimately signed in December of 2007 gives her 5 years to complete purchase of the property, which she will exercise nearly a year early, in fall of 2011. She will pay JLT the purchase price (less the value of a conservation easement), plus interest

and the costs of development that JLT incurred, as agreed upon in the lease. Karyn is currently securing a USDA/ FSA loan via the Direct Loan Purchase Farm Program and has received favorable rates.

Jefferson Land Trust has been busy in the interim, as well. They are in the process of finalizing a permanent conservation easement that will be in place at the time Karyn purchases the parcel, reducing future development potential of the farm and ensuring affordability. The pay-off of the farm may enable JLT to perform more deals like this, in a “rolling” farm fund that will be reimbursed for the value of the Red Dog Farm conservation easement through public and private grant funding.

This innovative deal worked quickly and smoothly, due to the willingness and commitment of the parties involved. When asked what advice she would give to others considering a deal like this, Karyn said, “Make sure there is a lot of trust in all the parties involved, ask the questions you are afraid to ask and be ruthless with yourself in making decisions about your business.”

#### **Resources:**

Red Dog Farm: [www.reddogfarm.net](http://www.reddogfarm.net)

Equity Trust: [www.equitytrust.org](http://www.equitytrust.org) -- provides a sample ground lease for duplication and public use

Jefferson Land Trust: [www.saveland.org](http://www.saveland.org)

Jefferson LandWorks Collaborative: [www.jeffersonlandworks.org](http://www.jeffersonlandworks.org)

Craft3 (Formerly Enterprise Cascadia): <http://www.craft3.org/>

One Pacific Coast Bank: <http://www.onepacificcoastbank.com/>

## STRATEGY #5: LEASING LAND FROM A PUBLIC ENTITY

- **Players: Farmer, Public Agency**
- **Level of Difficulty: Variably, typically high**
- **Investment Required of Farmer: Low**

How it Works: Public agencies, including cities, counties, federal government, National and State Parks, own nearly 40% of land in the U.S. (Major Uses of Land in the United States, 2002/EIB-14, Economic Research Service/USDA ). How this land is managed and regulated, and to the benefit of whom, is highly variable and often contentious. With complex laws in place to govern their use, such as Public Domain and the Antiquities Act, navigating a lease with a public entity may be extremely complicated. But, many government agencies are looking for ways to save money on management, share investment through public/private partnerships, and even divest in land ownership, making it a good time to consider leasing from a public entity. Plus, public agencies are generally not motivated by profit; leases are often based on existing, affordable rates.

Public lands have historically been made available for private commercial activities such as ranching, mineral extraction, and recreation. Expanding this scope to include agriculture could be a matter of simply finding the right person to ask.

As with all lease arrangements, successful negotiation requires:

- Good communication
- Shared interest or mutual benefit
- Willing players
- Exit strategies

Leasing from a public entity adds layers of complexity. These might include:

- A public “vetting” or competitive process where your plan and lease are carefully examined by a group to determine public benefit, economic or environmental impact or other factors.
- Added accountability: you may be required to produce reports or do presentations to demonstrate the project’s progress.
- Slow pace: working with bureaucracies can be irritatingly slow. You will be required to work at their pace. Getting a quick repair on your well pump in a dry August could require weeks of review.
- Conflict: Some people feel strongly that public lands should not be made available to businesses for commercial use. Be prepared to face questions of conflict of interest and the “fairness” of your deal.

- Variability in funding: Public agencies face funding that varies greatly based on myriad factors outside their control and yours. Agree to terms that will not affect your operation in the case of funding cuts or grant funding drying up.

Many of the challenges associated with leasing from a public entity can be mitigated in a well-written lease and through transparent communication. Additionally, working with a local agency, perhaps one you have an existing relationship with, will contribute to your success in getting a lease to publicly-owned land. A cold call to the Bureau of Land Management may fall on deaf ears, but asking your City Council member neighbor if that empty, city-owned parcel could be put to better use just might work.

## CASE STUDY: Viva Farms, Burlington, WA

Sarita Schaffer, Director of Viva Farms, doesn't seem easily daunted. When asked what hurdles she faced in leasing land from the Port of Skagit she seemed both surprised by the question and unable to come up with an answer. She and her project, Viva Farms, are a great example of how to lease land from a public entity: leverage local connections, work with reputable partners and organizations, be transparent and accountable, have a shared mission with the landowner. It became apparent that any hurdles that might have arisen in the process of developing an agreement were anticipated and mitigated early and easily.



*Viva Farms, Burlington, WA. Photo by: Sarah Wilcox*

Viva Farms is a bilingual incubator farm and training program that provides land, equipment, loans and training to beginning farmers, half of whom are Latino. The project is a joint venture of WSU Extension and Grow Food.org, an international non-profit dedicated to recruiting, training and capitalizing the next generation of sustainable farmers. Viva Farms is funded through grants, philanthropy and, in time, growing sales from their CSA, wholesale markets and farm stand.

Though Viva Farms is a non-profit, it still faces a lot of the same economic realities as other small farms, namely having to think long and hard about affording farmland in the rich Skagit Valley. American Farmland Trust ranks the Skagit Valley as the fifth most threatened agricultural region in the U.S. Land is in demand for farming as well as development, driving up values beyond what a farm operation can pay. Sarita saw that buying land would inhibit Viva's ability to invest and expand in the future, and so she looked into leasing options.

One of her partners, WSU Extension Skagit County Educator Don McMoran, recommended that Sarita contact the Extension office's landlord, the Port of Skagit. The Port is a public entity that is charged with

economic development in the natural resources sector, and governed by an elected Board of Commissioners. Following a successful meeting between Sarita, Don, the Port and a private investor, in just two months a lease was negotiated and signed- lightening speed when dealing with a public entity.

What made this process so efficient? For one, the Port of Skagit had identified assisting local agricultural projects as a priority for their work. Having a shared mission “greases the wheels” of any land deal.



*Ethan and Sarita Schaffer, Grow Food and Viva Farms  
Photo by: Sarah Wilcox*

Second, the Port was clear in what they were offering and Viva was prepared to meet those terms. The lease covered the land and the only improvements on it: water and electrical hook-ups. All other infrastructure would be paid for by Viva Farms, and must be approved by the Port. Viva’s business plan included such improvements and the organization was prepared to invest accordingly.

Third, as a WSU-sponsored project, Viva Farms brought with it to the table a good reputation, a proven track record of working with a public agency, and an existing landlord/ tenant relationship. Sarita also brought to the table an investor who was willing to co-sign the lease; easing any concerns the Port may

have had about the new farm’s ability to cover costs. The co-signor has since been removed from the lease due to good financial standing.

Although there were no major hurdles, there are complexities in this deal. Viva Farms must balance the Port’s need for a tidy, professional-looking site with the realities of production farming (and all of the boxes, supplies and equipment that come with it).

#### **ANOTHER EXAMPLE OF LEASING FARMLAND FROM A PUBLIC ENTITY:**

**Cuyahoga National Park of Northeastern Ohio has taken an innovative approach to protecting both the natural and scenic landscape as well as the rich farming history of the land. The National Park Service works in partnership with the Countryside Conservancy and private sector farmers to lease out farmland, houses and outbuildings to aspiring farmers to rehabilitate and operate them commercially. To date, 13 farms have been made available, along with infrastructure such as farmers markets to facilitate their success. The farms range in size from 5-60 acres and include production of eggs, vegetables, intensive grazing and integrated crop-livestock operations. Farming practices are monitored for sustainability. Leases are granted for 60 years.**

**This land use model is an example of public/ private partnership that fosters responsible land management, creates economic opportunity, and preserves rural character.**

Additionally, Viva does not hold a long-term lease with the Port. Though they have a three-year lease with three options to renew, their security is limited and the types of investments made must take this into consideration. “We really have to focus on investments that will pay for themselves,” says Shaffer. She is hopeful that a long-term lease is in their future, and again the shared vision of their organizations is in their favor; the Port is interested in value-added processing facilities for local farms and Viva Farms plans to expand in this direction, as well. The Port is open to proposals of shared public and private investment, making the possibilities even greater.

Not every deal is destined to go as smoothly as this one. Sarita’s advice for a farmer considering leasing from a public entity: “Have a strong personal relationship with your landlord, not just the institution but the people you will be face to face with. You need to be able to get in touch with them, and meet with them when needed. Work with agencies that have a pace that works with yours. Consider the reputation of the organization. What are their priorities? Do they have the same over-arching values? Because really, you’re not just going to be a tenant.”

**Resources:**

Viva Farms: [www.vivafarms.org](http://www.vivafarms.org)

Grow Food: [www.growfood.org](http://www.growfood.org)

Port of Skagit: [www.portofskagit.com](http://www.portofskagit.com)

Countryside Conservancy, Ohio: [www.cvcountryside.org](http://www.cvcountryside.org)

## STRATEGY #6: SALE OF CONSERVATION EASEMENT OR DEVELOPMENT RIGHTS

- **Players: Farmer, Buyer, Land Trust or municipality**
- **Level of Difficulty: High**
- **Investment Required of Farmer: Moderate**

Owning property gives the owner a “bundle of rights”, and some of these have a value and can be sold. Usually this involves selling the rights to develop portions of the property to a land trust for conservation purposes. But increasingly there are other “buyers” of development rights, including state governments and municipalities that are required to maintain certain conservation or environmental values. Selling development rights at the time of purchasing property can help lower the cost of a piece of property initially, though the transaction is complicated. More common is the selling of rights on a piece of property already owned, which is less complicated but requires initial purchased, which is sometimes out of reach.

Land Trusts, whether local, regional or national in scale, are increasingly interested in preserving working farmland. Most states now have programs to help fund the purchase of conservation easements via land trusts or county agencies. The federal government also supports preservation through its Farm and Ranchlands Protection Program. The process for obtaining this funding is competitive, complex and time-consuming. Landowners wishing to sell an easement need to work with a land trust or other easement-carrying agency that is willing and able to undergo the arduous process. Additionally, there are costs associated with easements that may be incurred by the landowner or the land trust, depending on the scenario.

Once a landowner and land trust (or municipality) have decided to pursue an easement, the value of the farmland with development rights is assessed by a qualified appraiser (one experienced in assessing agricultural value and familiar with the easement valuation process). A second appraisal is completed, placing a value on the property if development rights were removed. The difference between these two values is considered the “value” of the easement. This can represent anywhere for 10-70% of the market value of a property, depending on the number of development rights being forfeited and myriad other factors. A land trust will likely be interested in investing time and resources into projects that meet certain criteria or objectives, for example: larger farms, with water rights, currently being farmed, in an area where other lands are protected, etc.

When a public body purchases an easement, it is often in the form of a PDR (purchase of development rights) or TDR (transfer of development rights) program. PDRs/ TDRs are a planning tool used by a governmental body to control where and how much development occurs. For example, a municipality may decide to concentrate residential development along existing transportation corridors, exceeding the number of housing units previously allowed by zoning, by purchasing or transferring development rights from rural areas nearby. The rural area would then maintain larger parcels suitable for agriculture, and that land may remain more affordable with the development rights removed.

Easements are extremely complicated legal encumbrances, often in perpetuity. Working with a reputable land trust and attorney is essential to the success of these projects.

**Resources:**

American Farmland Trust: <http://www.farmland.org/>

Land Trust Alliance: <http://www.landtrustalliance.org/>

**CASE STUDY: Tahoma Farms, Orting, WA**

*Tahoma Farms, Orting, WA Photo by: Sarah Wilcox*

Preserving a 100-acre dairy farm in Orting, Washington required no fewer than 5 attorneys, a land trust, 3 farmers, an investor, a county planning department, a willing and patient seller, \$1.2 million dollars in grant funding and 2.5 years. Like most aspects of agriculture, this land transfer deal was labor intensive, but because it was done well it will yield benefit for years to come; in perpetuity, in fact.

This deal began in an unlikely place; Pierce County initiated a series of meetings to gather input for a strategic plan for agriculture. Dan and Kim Hulse, who were leasing farmland in Enumclaw and growing their distribution business, Terra Organics,

attended a meeting to give voice to the resurgence and viability of small farms. They also discussed the insecurity they felt trying to grow a business on leased land and their desire to purchase property, if it were somehow affordable. It was through that meeting, and others that followed, that the myriad pieces of the puzzle came together in what would become Tahoma Farms. But the process was a long and complicated one.

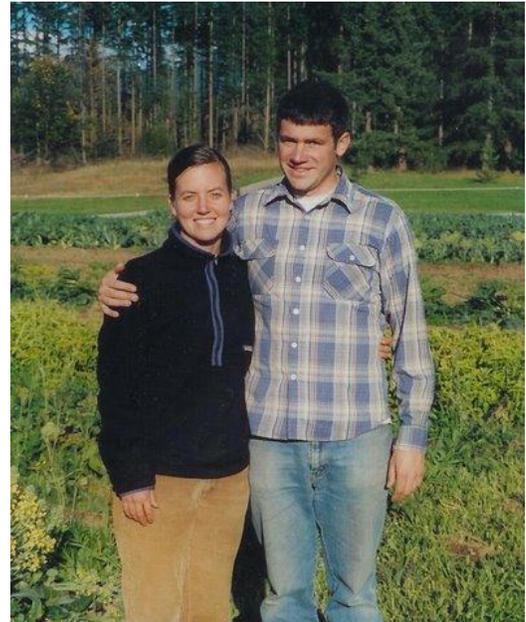
At the same time that Pierce County was proactively drafting its future of agriculture, the retired farmer was preparing to sell her 100-acre farm in Orting, WA. Like many aging landowners, she wished to sell the land not for development, but for agriculture. It was the wish of she and her late husband that their former dairy farm continue to be a farm, and so her lawyer contacted PCC Farmland Trust to see if they were interested in purchasing the land. Since the trust had recently decided to focus on protecting land with easements instead of purchasing land, they declined but committed to helping find a buyer that would honor the wishes of the seller and agree to the sale of development rights at the same time.

PCC Farmland Trust embarked upon a search process that extended throughout the Pacific Northwest, looking for potential buyers that wanted a piece of this prime soil for an organic operation. Though there are many beginning farmers, there are fewer who have done the business planning and have their finances in order to jump at an opportunity such as this. The Trust advertised through Craigslist, Washington FarmLink, the Capital Press, and Tilth Producers conferences. Dan and Kim Hulse were the first on board, and had a great track record and reputation, along with a strong business plan, that made them ideal partners. Soon

after, Carrie and Ken Little were onboard with their plan to start Little Eorthe Farm. Some potential candidates were ruled out due to inability to secure financing or lack of a business plan. Eventually there were 27 acres unspoken for, which an investor agreed to purchase and lease to a beginning farmer with favorable terms.

Finding buyers was just one small step. The Trust, along with Pierce County, also spent two years securing funding for the purchase of the development rights, or conservation easement, which they would co-hold, to keep the property farmland forever. Through Washington State's Wildlife and Recreation Program (WWRP), as well as the County's Conservation Futures, the Trust and the County were able to secure \$1.2 million in competitive grants, reducing the cost of the land by one-half for the farmers purchasing it.

With easement funding lined up and buyers ready to go, the transfer was ready for completion. The landowner/ seller negotiated a purchase price with each of the three buyers. Agreements were drafted and negotiated among the buyers and their attorneys. The Trust finalized the conservation easement, which also required extensive legal review by all parties. Myriad details had to be settled in preparation for the "Simultaneous Sale"- meaning that the sale and purchase of both the development rights and the land would happen at once among all of the parties involved—no small feat. After two and a half years, the project was completed in 2009, and has created a win-win for the seller, the farmers and PCC Farmland Trust.



*Dan & Kim Hulse, Tahoma Farms*

Of course, the process wasn't without its hurdles. "Maybe we should have just bought the property and then split it up," says PCC Conservation Director Melissa Campbell now in hindsight. Having three separate easements, one for each portion of the farm, and three different purchase and sales agreements, made for a cumbersome process. Also, finding a way to fairly divide the water rights required extensive professional consultation.

The components that led to the success of the project are myriad:

- The seller was patient and dedicated to the finding the right farmers to sell to. She could have simply sold the farm to the highest bidder at any time in the two and a half years it took to complete the complicated deals.
- Pierce County was a great partner and leader, providing technical expertise and project management along the way.
- PCC Farmland Trust had staff time dedicated to this deal, keeping the ball rolling and coordinating with all parties involved.
- The purchasing farmers had the necessary experience and "lendability" to complete the deal. Dan and Kim secured financing through Northwest Farm Credit Services and the Washington State Housing and Finance Commission's Beginning Farmer Program.

Both Dan Hulse and Melissa Campbell of PCC Farmland Trust learned a great deal through this process. When asked what advice they would have for others embarking on a deal like this, Dan said, “Explore all of your options. Get a good attorney. And remember: buying the farm is just the beginning. You’ve got to know how you’re going to make money. This might not be the best model for someone just getting started, but it is a great model for getting land from the hands of retirees to beginning farmers.”

**Resources:**

Tahoma Farms: <http://www.tahomafarms.com/>

PCC Farmland Trust: <http://www.pccfarmlandtrust.org/>

NW Farm Credit Services: <http://www.farm-credit.com/>

Washington State Housing and Finance Commission: <http://www.wshfc.org/FarmRanch/index.htm>

## NON-TRADITIONAL LENDERS

For the many beginning farmers for whom purchasing land is out of reach, so too is securing financing at a bank. Regardless of banking and housing crises plaguing the millennium thus far, there are simply few farms that look good enough on paper to secure a traditional loan.

Luckily, many resources exist today for farmers to borrow from a wide array of options- from the USDA to a friendly neighbor. Like the land deals listed in this guide, the following innovative financing strategies require the farmer and the lender to do their own due diligence. Farmers should have a business plan drafted, a good-enough credit score (will vary based on lender), a penchant for paperwork, and a strong relationship and ability to communicate with the lender.

Lenders need to critically assess the strength of the farmer's business plan as well as their track record and reputation. They also need to be certain they can afford to invest for the time frame promised. Lastly, the intention of an investor is extremely important to define and communicate. Farming is not a high-stakes, vastly profitable industry. Investors need to be realistic about the amount of return likely, the timeline of any return, and the risks associated with the deal. Seeking professional advice from an accountant, financial advisor or attorney before money changes hands is wise.

### A Quick Lesson in Investment

Investment can come in many forms, and thinking outside the box can create mutual benefit for farmers and investors. For the purposes of this guide, investment will be broken down into the following categories, described in general terms here:

1. **Equity Investment**—The most familiar form of equity investment is when shareholders buy a stake in a company, and their investment translates into ownership of a portion of the company. Generally this is a longer-term investment that does not yield much return on an annual basis, but instead the equity may grow as the value of the business grows. This type of loan is attractive to farmers that cannot afford to pay a monthly payment or added interest, but giving up a portion of ownership of a farm or business should be carefully considered.

Equity investment usually involves the formation of a corporation. This process requires considerable paperwork and annual reporting, as well as tax considerations. All of these factors increase in complexity with added shareholders. Prepare to choose or elect officers and write an operating agreement which outlines roles and responsibilities, decision-making, exit strategies and myriad other important details. This type of lending relationship works well for parties who are organized and not averse to paperwork and deadlines.

2. **Cash Loan**—A cash loan often requires much less formality, though should still be a carefully considered endeavor. Whether it comes from a bank, credit union, family member or CSA member, typically a lump sum of cash is loaned with the expectation of a monthly, quarterly or annual payment made with an agreed upon rate of interest added. An agreement is signed by both parties outlining the terms of the loan, and a promissory note or lien may be included as assurance of payment.

Cash loans are attractive due to their simplicity, but farmers need to be realistic about the state of their cash flow and the ability to make payments on debt, especially with added interest. Good business planning and negotiating favorable terms can eliminate much of this risk upfront. Additionally, the loan will come due (to “term”) at some point, meaning the farmer needs to have a plan to pay off a lump sum at that time.

Some ways to make a cash loan more feasible include making interest-only payments, or having the lender receive farm produce as interest.

3. **Mortgage**—The most common way to finance a farm is through borrowing money for purchase of property. Lenders agree to loan you a portion of the purchase price of the farm, and together with the money you have for a down payment, you are able to buy land. Typically you hold title to the property, but the lender has a lien (is this what it’s called?) on it, and if you default in your payments, ownership will default to the lender. Your investment in the property, and the ability for you to realize a gain in its value, is secure so long as you make timely payments.

Nearly all mortgages in the U.S. are given through major financial institutions, but in keeping with the theme of this guide we will explore other options. These include borrowing from the USDA and other government-backed lenders, and owner-financing.

**Get Creative**— This guide cannot attempt to cover the legalities and complexities of financing a business or land; every scenario will have its own set of considerations. But the following pages will profile a few examples of how farm businesses, all within rural Jefferson County on the Olympic Peninsula of Washington, were able to leverage non-traditional lending to start or grow. Think outside of the box when looking for financing. Get creative in looking for mutually beneficial ways to put money to work for you and a lender!

(Resources are listed at the end of this chapter that will provide more information on specific programs and opportunities)

## STRATEGY #7: POOLED EQUITY INVESTMENT

### CASE STUDY: Brown Dairy, Chimacum, WA

Like in many rural communities, word spreads fast in Chimacum, WA. As soon as Gloria Brown began thinking that she might be ready to part with her historic dairy farm, folks started to talk. The farm is visible from the only stop sign in “town”. The beautiful farmhouse and pastures provide the quintessential Jefferson County landscape photo



*Brown Dairy, Chimacum – Photo by: Jefferson Land Trust*

opportunity. More importantly, the 50 acre farm sits on rich soils, borders Chimacum Creek, and has operated as a family-run dairy since the 1850’s. Keeping this farm in productive agriculture was a priority not only for the Brown family, but also for the residents of Chimacum and the conservation and farming community at large.

Gloria and her husband, BG, bought the farm in the 1950’s and ran it until their retirement in the 1990’s. After the passing of her husband and son, Gloria wished to stay on the property but found upkeep difficult. She leased the pasture to a farmer who managed the pastures, but meanwhile the infrastructure began to show it’s age. When approached by Jefferson Land Trust (JLT) to discuss the future of the farm, Gloria consented, bringing her own family and professional support to the table.

The Land Trust knew the importance of this parcel: good soils, historic importance, prime location close to transportation and utilities, existing infrastructure, proximity to other protected farms, creek frontage. And they also wanted to honor Gloria’s wishes: to see the land stay in agriculture and to provide a comfortable retirement for her. This special property allowed for both.

Gloria agreed to sell JLT an option to purchase the property at the appraised value. The option, purchased in 2008, would expire in 2010, with payments made in that time. This gave JLT time to get an appraisal completed, apply for grant funding for a conservation easement, and figure out what exactly they were going to do with a 50 acre dairy farm!

Early in the process, Mt. Townsend Creamery expressed their interest in the property for expansion of their artisan cheese factory. But as a new business they were not in the position to purchase the property, as it also needed extensive updating and investment to be operable. After an extensive feasibility study (funded by a USDA Rural Business Enterprise grant which the 2-year option allowed time for), the Creamery concluded that the site would allow for the expansion they were hoping for, but that considerable outside investment would be needed.

As part of the USDA RBEG grant, Craft3 (formerly Enterprise Cascadia), a non-profit Community Development Financial Institution, created investment scenarios that just might piece together the pieces of the puzzle. Still the question loomed: who should own and purchase the property? JLT was not interested in owning the property, rather protecting it long term. The Creamery could not afford to both purchase and renovate. Perhaps local investors that cared about the future of agriculture in the county would be interested in purchase?

Jefferson Land Trust approached potential investors, who expressed an interest in the deal. The Land Trust then asked local business advisor and CPA Charley Kanieski to structure an arrangement for the myriad parties involved. "It was easy," says Charley, "They wanted to get their money out of Wall Street and put it on Main Street."

Here's how they did it: Ten investors created a Limited Liability Corporation (LLC) and pooled equity to purchase the property from Gloria Brown. The LLC paid 50% down and Gloria is carrying the balance for interest-only payments, with payoff due in 3 years. The Creamery has leased the property from the LLC for 3 years, which includes an option for them to buy the property anytime during the course of the lease for an established price that increases by 3% each year, providing a return on investment to the LLC and protecting themselves from the vagaries of the current real estate market. Then Gloria leases the farmhouse back from the Creamery, resulting in a circle of payments where each party's monthly income equals their monthly payments.

The 2009 conservation easement, which was funded with Conservation Futures and state WWRP funding, lowered the purchase price of the farm for the LLC, a savings that will be passed on to the Creamery if they exercise the purchase option.

This deal required many of the same components found in other deals: partners with a good reputation and track record in the community; professional assistance from a financial planner, good communication, multiple attorneys and realtors; and a willing and patient seller that wants to see the farm continue to be productive. With the help of ten local investors, fifty acres of farmland will be preserved and a sustainable food business will expand. And, Gloria Brown will have a front row seat to watch her family's legacy live on.

**Resources:**

Charley Kanieski, Our Business Guide: [www.ourbusinessguide.com](http://www.ourbusinessguide.com)

Mt. Townsend Creamery: [www.mttownsendcreamery.com](http://www.mttownsendcreamery.com)

USDA Rural Business Development Grants: [www.rurdev.usda.gov/bcp\\_rbeg.html](http://www.rurdev.usda.gov/bcp_rbeg.html)

Craft3 (Formerly Enterprise Cascadia): <http://www.craft3.org/>

## STRATEGY #8: PERSONAL LOAN WITH PROMISSORY NOTE

### CASE STUDY: SpringRain Farm, Chimacum, WA

John Bellow and Roxanne Hudson had an all-too-common tense relationship with the owner of a parcel adjoining SpringRain Farm. They had recently purchased 21 acres of productive ground in Chimacum when, in 2009, they heard that their neighbor was losing the property to foreclosure and the land would be auctioned off. The 5 acre property would provide access from a major road, access to additional public water, hassle-free access to their other property, a septic system, and a trailer that could be used for living space or potentially processing value-added products. Trouble was, John and Roxanne had already purchased two properties and were investing in infrastructure and perennial crops. Their young business could only secure a loan with a high interest rate and paperwork requirements that took too long, and the auction required cash payment.

John and Roxanne reached out to Jefferson Land Trust, whom they had been working with to secure a conservation easement, to ask for help. The Executive Director put them in touch with a land trust supporter who had expressed interest in investing in a local farm. The very next morning, community member Judy Ruggles met with John and Roxanne, drew up a contract and promissory note, and loaned them the cash to have on hand at the auction that day at noon. John and Roxanne were able to secure the property for a price that worked for them, and now own it outright, with Judy taking claim to it if they are unable to meet the terms of their deal.

Judy describes her role as “being the bank”. She did not want to own the property and deal with the complicated details of a lease and being a landlord. Instead, she has security in the promissory note and gets paid the interest on the loan. This deal, and the speed with which it happened, was made possible by the relationship each party had with Jefferson Land Trust and their track records in the community.

## STRATEGY #9: SELLER “CARRYING THE CONTRACT”

### CASE STUDY: Mystery Bay Farm and Dairy, Nordland, WA

Rachael VanLaanen and Scott Brinton spent years working on farms, saving money, and learning the craft of cheesemaking. Trained as teachers, they also knew that someday they wanted to use a farm as an educational site. But first they needed land.

Rachael and Scott were renting a cabin and 5 acres of pasture on Marrowstone Island. The lovely parcel was a short walk from Mystery Bay and had a water view. It was mere steps from the Nordland store, the primary commercial retail store on the island. Surely they could never afford an idyllic piece of land like this, right?

Never underestimate the power of a good working relationship! Over the course of two years Rachael and Scott developed a strong connection with their landlords, who also lived on the property. As Rachael and Scott developed their dream of creating a goat dairy, their neighbors saw the earnestness and hard work of the young couple and offered to sell them the 5 acre parcel and carry the note (finance the sale). The two parties negotiated a price; Rachel and Scott used their savings as a down payment and now make monthly mortgage payments. Although the landlords could have sold the parcel for more on the market, they have assured themselves good neighbors, have satisfaction from helping young farmers get started, and get regular income, as well.

Like many land deals, there was attention given in this sale to the prospect of Rachael and Scott selling the property shortly after buying it for a considerable profit. Though this was not expected, both parties agreed to include in their agreement provisions to share the profit if unforeseen circumstances arose. If Rachael and Scott sold the property within five years of purchase, they were committed to splitting the profit with the sellers. In the 5-10 year range, they would share 25% of the profit with the sellers. This clause protected the “good will” of the sale, an important quality in many innovative land transfers.

But of course five acres of pasture is just the beginning of developing a dairy. Rachael and Scott called on all of their myriad skills to build a commercial, Grade A goat milk dairy in only 2 years. They salvaged building materials, pulled in “sweat equity” support from family and friends, worked with the Small Business Development Center on a thorough business plan, and charmed local investors. In all, seven investors contributed funds to develop Mystery Bay Farm, which produces fresh goats milk cheeses, including a chevre that won a first place award from the American Cheese Society.

The farm is now open to the public. Rachael and Scott offer tours, farm dinners, tastings and soon classes. Their frugality, hard work and sound business planning made possible, in a short time, what seemed like a dream only a few years ago.

#### Resources:

There is a Small Business Development Center in every state: <http://www.sba.gov/content/small-business-development-centers-sbdcs>

## WHERE TO LOOK FOR FINANCING

Lenders may be traditional lenders, such as a local bank or major financial institution, which are typically easy to locate. Some alternative sources include:

- **Farm Credit Services**—Congress established the Farm Credit System in 1916 to provide a reliable source of credit for the nation's farmers and ranchers. Today, the System provides more than one-third of the credit needed by those who live and work in rural America. Northwest Farm Credit Services works with farmers in Washington on loans, grants, mortgages and financial planning. <http://www.farm-credit.com/>

Northwest Farm Credit Services also has a Beginning Farmer and Rancher Program through a partnership with the Washington State Housing and Finance Commission to provide loans for new farmers to acquire land. They publish a handbook of valuable resources for any beginning farmer entitled, “Cultivate the Soil.” <http://www.wshfc.org/FarmRanch/index.htm>

- **Farm Services Agency (FSA)**—is a program of the USDA, which provides mortgages and operating loans to farmers that do not have sufficient credit to borrow from a traditional lender. As of 2012, FSA will also guarantee qualifying “owner-contract” loans, providing added security to a land transfer between buyer and seller when a traditional lender/ mortgage is not involved. Information on all FSA loans can be found at your local USDA office or: <http://www.fsa.usda.gov/FSA>
- **Community Development Financial Institutions (CDFIs)**—are credit unions or banks that lend to underserved populations. Funded partially through federal funds and partially through leveraged investments, CDFIs offer financing to individuals and small businesses that may not otherwise be able to obtain financing. Craft3 (formerly Enterprise Cascadia) and One Pacific Coast Bank are examples of CDFIs. Others can be found here: <http://www.cdfi.org/>

Private investment is another option. Some resources to help access local investment include:

- **Slow Money Alliance** is an organization working to bring private investment to sustainable food enterprises. <http://www.slowmoney.org/>
- Local investment groups are cropping up in many communities across the U.S. Many investors are choosing to place their equity in local businesses rather than in traditional retirement funds or the stock market, where they can see how their money is being put to use. A newly published book (2012) entitled, “**Local Dollars, Local Sense**” by **Michael Shuman** describes this trend in detail and provides information on how to find an investor group in your region.

## STRATEGY #10: COMMUNITY DEVELOPMENTS WITH FARMS

- **Players: Farmer, Developer**
- **Level of Difficulty: Moderate**
- **Investment Required of Farmer: Variable**

America witnesses 500,000 acres of prime farmland converted to development every year (American Farmland Trust, date – add bibliography), much of it for residential development. And of course flat, tillable land is the easiest and most cost effective to build on. Couple this with a continued trend of housing development further from urban areas and the desirability of the mini-estate, and there is a perfect storm brewing for the conversion of prime farmland to continue unchecked.

But there is a new trend taking hold in the development of subdivisions: planning for and creating farms within residential developments. What appears to be a contradiction has great potential for preserving farmland in close proximity to urban areas. It also indicates the home buyer's desire to live near a farm and stay connected, in some way, to the rural landscape.

### CASE STUDY: Prairie Crossing Farm, Grayslake, IL

One of the first of these developments, and most widely publicized, is Prairie Crossing in the suburbs of Chicago. A “conservation community”, Prairie Crossing is comprised of 359 single-family homes and 36 condominiums. Of the 677 acres, 350 is devoted to open space, wetlands, a commercial farm and an educational farm. The community includes schools, a train station for commuters into the city, a retail district, and events center.

During the growing season there is an on-site farm market, selling produce from on-site Sandhill Organics as well as other regional growers. Community members also can participate in Sandhill's Community Supported Agriculture (CSA) program. The Learning Farm is an educational site for school children in the area, a job training site for local teens, afterschool programs, and public workshops.

Additionally, Prairie Crossing is home to the Farm Business Development Center, assisting beginning farmers in the region access mentors, capital, business planning and more. While this type of development does indeed represent a net loss of farmland, it is a model for developments that incorporate rural elements into communities and design for agriculture, commerce and livability. Plus, it provides farmland for lease to growers, with customers and retail outlets on-site.

The developers of Prairie Crossing recently wrote a handbook entitled “Building Communities with Farms”, profiling five similar communities around the U.S. It can be found at the PC website:

<http://prairiecrossing.com/index.php>

## STRATEGY #11: LAND LINKING

- **Players:** Farmer, land owner, land linking program
- **Level of Difficulty:** Varies
- **Investment Required of Farmer:** Varies

With so many landowners preparing to retire or otherwise transfer their land through sale or inheritance, there is an opportunity to get that land into the hands of people who will farm it. Land Linking programs are being developed around the country to link owners with potential tenants or buyers. These programs are clearinghouses that record information about land that is, or will become available. Farmers looking for land can work with the linking program to find one that meets their needs. If a “match” is made, the parties will then begin the long process of negotiating a deal that works for them. Linking, though not always successful, is a great way to bring together two parties whose paths may not otherwise cross.

Some linking programs, such as California Farm Link, provide services beyond the initial link that are integral to beginning farmer success. Business planning, financing, succession planning and technical assistance are some examples of the support available.



WA FarmLink hosts workshops for transitioning farmland owners and beginning/aspiring farmers, as well as on-farm networking events for landowners and land seekers. Left: Networking Event at Dog Mountain Farm, Carnation, WA. Right: Networking Event in Orting with PCC Farmland Trust, Pierce Conservation District, and the Trust for Public Land. Photos by: Sarah Wilcox

### Resources:

WA FarmLink: <http://www.cascadeharvest.org/programs/washington-farmlink>

Currently 22 states and Canada have farm linking programs represented in the International Farm Transition Network. Links to all of these programs are available on their website: <http://www.farmtransition.org/>

## LEVELING THE FARMING FIELD: HOW PUBLIC POLICY AFFECTS ENTRY INTO FARMING

Public policy, whether at the local, state, or federal level, plays an active role in what land is available for farming, how much it costs, the regulations that affect it, how the land can be used, what will happen to it when the owner dies, and many other considerations. There is no over-arching federal or state policy framework that addresses the major demographic shift happening in rural America. Below are a few examples of effective policy created by disparate agencies that create incentives instead of barriers for farmers to begin or stay profitably in business.

- **USDA Beginning Farmer and Rancher Development Program (BFRDP)**—The BFRDP (which partially funded the publication of this handbook) was created in the 2008 Farm Bill. This precedent-setting initiative received \$75 million in funding for start-up support for beginning farmers, credit provisions, loan guarantees, conservation incentives and direct technical assistance. It funds community-based organizations, non-governmental groups, extension, state and USDA agencies and community colleges through a competitive grant process. The program will be up for consideration in 2012 when the 2013 Farm Bill is being debated. Support at the federal level is critical in developing appropriate strategies nation-wide. <http://www.csrees.usda.gov/fo/beginningfarmerandrancher.cfm>
- **Federal Farm and Ranch Land Protection Program (FRPP)**—provides matching funds to help purchase development rights to keep productive farm and rangeland in agricultural uses. Working through existing programs, USDA partners with State, tribal, or local governments and non-governmental organizations to acquire conservation easements or other interests in land from landowners. USDA provides up to 50 percent of the fair market easement value of the conservation easement. To qualify, farmland must: be part of a pending offer from a State, tribe, or local farmland protection program; be privately owned; have a conservation plan for highly erodible land; be large enough to sustain agricultural production; be accessible to markets for what the land produces; have adequate infrastructure and agricultural support services; and have surrounding parcels of land that can support long-term agricultural production. [www.nrcs.usda.gov/programs/frpp/](http://www.nrcs.usda.gov/programs/frpp/)
- **Federal Income and Estate Tax Credit for donation of Conservation Easement**—There are two main kinds of federal tax benefits available to conservation donors: federal income tax benefits and federal estate tax benefits.

**Federal Income Tax Benefits:** Donors of land and conservation easements may claim an income tax deduction under § 170 of the Internal Revenue Code. The exact amount of tax savings depends on several factors:

- How long the donor has owned the property (benefits are generally greater if owned for more than one year);
- How the donor has used the property (residence, investment, agricultural);
- The income of the donor (the higher one's income, the more one will save on taxes); and

- The value of the donated property (the more valuable the property, the bigger the deduction).

Federal Estate Tax Benefits: A donor may also save substantially on estate taxes if he donates a conservation easement. Under § 2031(c) of the Code, up to \$500,000 may be excluded from one's taxable estate if he or she had donated a qualifying easement. As with the income tax benefits, the larger the value of the donated easement, the bigger the deduction.

Both Income and Estate Tax law are under consideration for expiration or significant change at the time this information was compiled. Please consult appropriate land use or financial professionals for more information on the tax benefits associated with donation of easements.

- **Differential Assessment Taxation (“Current Use”)**—Most states and/or counties have property tax incentives that assess the taxable value of farmland at a different rate than that of commercially developed land (the “highest and best use”). This may be established through current use designation or zoning. Since farms pay more in taxes than the value of the public services they receive (source: American Farmland Trust Information Center), creating low tax burden scenarios is both fair and may have implications on land use as a result. Michigan, New York and Wisconsin go so far as to allow farmers to claim state income tax credits to offset their local property tax bills. Especially in regions where farmland prices are high, incentivizing farming activities makes farms more likely to stay in business than sell to the highest bidder.
- **State Farmland Conservation Programs**—Most states in the U.S. have farmland preservation programs, though their capacity and functions vary greatly. They all utilize the conservation easement as the primary tool for limiting development on farmland. According to Washington's Office of Farmland Preservation, in 2008 there were 1.77 million acres protected nation-wide through State preservation programs (with potential matching funds coming from the Federal Farm and Ranchland Protection Program and local funds).

Much attention has been given to the availability and affordability of “protected” farmland. In areas with high development pressure, high cost of farmland, or coveted rural open space, conservation easements do not necessarily limit the market value of farmland. And easements typically do not require land stay in agriculture, simply that it not be developed. Some state programs, including Vermont and Massachusetts, include in their easements language that requires commercial farming to continue on the parcel(s) and to be confirmed via tax records annually or upon demand. Additionally, these states strengthen their easements with an Option to Purchase at Agricultural Value (OPAV). This tool gives the holder of an easement (typically a land trust or county) the first option to purchase the property at the value assessed specifically for agriculture. Another encumbrance which can strengthen an easement is to limit the size of the home which can be built. This minimizes the potential for the parcel becoming part of a rural estate instead of a commercial farm. State programs that go beyond the basic conservation easement address availability and affordability for beginning farmers.

- **New Market Tax Credits**—This federal tax incentive program was established by the U.S. Congress in 2000 to spur investment in businesses in low-income communities. It attracts much-needed capital to these areas by allowing investors to put equity into Community Development Financial Institutions (CDFIs) and then deduct 39% of their investment from their Federal income tax over a seven-year

period. The CDFIs then loan to appropriate applicants, performing due diligence and otherwise behaving much like a traditional bank. What distinguishes CDFIs, though, are the certification requirements. In order to receive these investments, CDFIs must be a domestic corporation or partnership whose primary mission is serving and lending to low-income people and communities. Additionally, CDFIs must maintain a governing or advisory board with representation from the community they serve. This program has great potential to funnel investment into farmland purchase for beginning farmers.

The Coalition of Community Development Financial Institutions has members throughout the U.S.

<http://www.cdfi.org/>

- **Iowa's Beginning Farmer Tax Credit**—The Beginning Farmer Tax Credit Program was enacted by the Iowa legislature as an incentive to keep land in production agriculture, by allowing agricultural asset owners to earn tax credit for leasing their land to qualifying beginning farmers. The program includes tax credit for the leasing of agricultural land, depreciable machinery or equipment, breeding livestock, and buildings. The credit is applied toward state income tax owed, up to 5% of the value of a cash lease or 15% of the value of a share agreement. Leases must be for 2-5 years and rated at market value. Beginning farmers must be of low to moderate needs, had training in agriculture, and be actively engaged in farming the leased land or equipment.

<http://www.iada.state.ia.us/BFTC/index.html>

## GLOSSARY OF TERMS

(Legal definitions provided by The Farlex Legal Dictionary)

**Capital Improvements:** An improvement made to extend the useful life of property or add to its value. Major repairs such as the replacement of a roof are capital improvements. The costs of capital improvements to business property must be accounted for as an asset in accounting, and may be depreciated for tax purposes.

**Conservation Easement:** In the [United States](#), a **conservation easement** is an [easement](#) — a transfer of usage rights — which creates a legally enforceable land preservation agreement between a [landowner](#) and a municipality or a qualified land protection organization (often called a "[land trust](#)"), for the purposes of [conservation](#). It restricts [real estate development](#), commercial and industrial uses, and certain other activities on a property to a mutually agreed upon level.

The decision to place a conservation easement on a property is strictly a voluntary one where the easement is sold or donated. The restrictions, once set in place, "run with the land" and are binding on all future landowners (in other words, the restrictions are perpetual). The restrictions are spelled out in a legal document that is recorded in the local land records and the easement becomes a part of the chain of title for the property.

**Equity:** Having an ownership stake in something of value, or the value of assets if all investment were "cashed out."

**Ground Lease:** Typically a long-term lease that involves the tenant paying for all improvements. As described in this handbook, a ground lease may be written so that the tenant retains ownership of these improvements.

**Land Trust:** A private, nonprofit organization that, as all or part of its mission, actively works to conserve land by undertaking or assisting in land or conservation [easement](#) acquisition, or by its stewardship of such land or easements. A "Community Land Trust" also holds easements but for the purpose of providing affordable housing instead of conservation.

**Lease:** A contractual agreement by which one party (the lessor/ landlord) conveys some portion of rights in property to another party (the lessee/ tenant), for a limited period, subject to various conditions, in exchange for cash payment or something of value, but still retains ownership.

**Lessee:** Someone who leases land or other property, commonly referred to as a tenant.

**Lessor:** The legal term for someone who grants a lease, commonly referred to as a "landlord".

**Life Estate:** A legal arrangement, set up at the time of sale of a property, whereby the seller becomes a "life tenant". During his or her life, the "life tenant" retains use (the rights to rents and profits), possession of the property and costs of maintaining the property until death. The new owners receive full ownership upon death of the tenant. The life tenant cannot sell or waste the property without the consent of the new owners.

**Owner Contract/ Owner Financing:** A seller of property holding a first or second mortgage for some, or all of the entire purchase price. This contractual arrangement can benefit both parties—the seller "earns" interest and the buyer doesn't have the same hurdles faced when working with a traditional lender.

**Promissory Note:** A written promise made by one party to make a stated payment in full by a certain date. A promissory note is a binding, legal contract.

**Speculative Value:** As pertains to real estate, the purchase of property in an attempt to profit from fluctuations in its price irrespective of its underlying value. This is relevant to farmland when it is purchased to be sub-divided, converted to another use, or resold for profit after a short time—these values will usually be much higher than the revenue it might generate as a farm.

**Stewardship:** The careful and responsible management of something entrusted to one's care, often used to refer to land management.

**Succession:** The process of property or rights being transferred (for the purpose of this handbook, typically a business) from one person to another, through sale, inheritance or any other means. Commonly refers to generations within a family “passing down the farm”, but can refer to any transfer of a business.

**Tenancy:** The right of possession to or use of a property, either as a leasehold interest or any ownership interest.

**Tenant:** A person who has the right to occupy, use or possess land or property by way of an agreement, conveyed by a landlord.

**Tenure:** Currently refers to the ownership of property or real estate. Historically it referred to a tenant's use of the land in exchange for goods or services paid to a landlord.

WA FarmLink: <http://www.cascadeharvest.org/programs/washington-farmlink>

Cascade Harvest Coalition, 4649 Sunnyside Ave N, Room 123, Seattle, WA 98103 (206) 632-0606