

# Buy-Protect-Sell Pilot Overview

## *Staff Contact*

Please do not hesitate to reach out to Mary Chambers, Ag + Open Space Agricultural Specialist, should you have any questions regarding the Buy-Protect-Sell pilot program.

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## *Disclaimer*

The following overview describes Ag + Open Space's current intentions and plans for our Buy-Protect-Sell pilot program. The actual implementation of this pilot may differ from the information stated below. More detailed information will be provided to participants in the program as each stage is implemented.

## *About Ag + Open Space*

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

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

## *The Farmland for All Program*

In order to forward the goals of the Vital Lands Initiative and in response to the input of our agricultural community stakeholders, Ag + Open Space is developing a "Farmland for All" program, which in the future will be a toolkit containing multiple tools and strategies focused on conserving agricultural lands while enhancing equitable access to agricultural land for agricultural producers.

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

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

## *The Buy-Protect-Sell Pilot*

The first tool that we are developing for the Farmland for All toolkit is a “Buy-Protect-Sell” strategy, whereby Ag + Open Space will seek out and purchase a farm or ranch property from a willing seller; protect it with a conservation easement, agricultural conservation covenant, and affordability covenant; and sell the conserved land to a selected buyer. These restrictions may reduce the property's appraised value, with the aim of making it more affordable for agricultural producers.

One of the Farmland for All program goals is to enhance equitable access to agricultural land for agricultural producers. The Buy-Protect-Sell pilot is therefore designed with the understanding that land access is especially difficult for limited resource farmers (see our study on [Land Access and Land Tenure for Limited Resource Farmers](#)) and for communities who, now or in the past, have faced discrimination or exclusion. When comparing among potential buyers (see below, under 5. Application stage 2: select buyer for specific property), we will consider applicants' level of need for this program, including whether the applicant would be a first-time landowner and what needs led the applicant to apply to the program. We will also prioritize proposals which offer community benefits, such as access to fresh food for local communities, opportunities for outreach and education, or enhancement of conservation values such as soil health or native plant habitat.

The Buy-Protect-Sell pilot process will consist of the following steps, each of which is described in more detail in the sections below.

1. Application stage 1: identify pool of potential buyers
2. Identify high-priority property
3. Purchase property
4. Design permanent protections for property
5. Application stage 2: select buyer for specific property
6. Sell property, subject to conservation easement, agricultural conservation covenant, and affordability covenant
7. Monitor property in perpetuity

These steps may occur in a different order than listed and they may overlap. For example, Ag + Open Space might purchase a property before selecting a specific buyer for that property. However, it is also possible that Ag + Open Space would work with a landowner who would maintain ownership of their property until Ag + Open Space had completed selection of a new buyer, allowing for a simultaneous transaction.

## 1. Application stage 1: identify pool of potential buyers

Before beginning the selection of a buyer for a specific property, Ag + Open space will develop a pool of potential buyers who meet a minimum threshold of required experience. Applicants will complete a simple initial application which will assess their goals, experience, and qualifications. This initial application will not be tied to any specific property. A Buyer Assessment Panel consisting of Ag + Open Space staff and external experts will review the applications and determine whether applicants meet the required threshold.

Applicants may submit their application to join the potential buyer pool at any time, and review will occur on a rolling basis. The application will be open until Ag + Open Space identifies a specific property to buy, protect, and sell. The application will be available in print and online via the [Farmland for All webpage](http://www.sonomaopenspace.org/FarmlandForAll) (<http://www.sonomaopenspace.org/FarmlandForAll>) in English and Spanish. Ag + Open Space will work to provide translation into other languages as needed.

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

### Support for applicants

Ag + Open Space staff will offer support to all applicants as they complete the initial application. Support will be made available in English and Spanish, as well as other languages as possible. More details will be shared on the [Farmland for All webpage](#) as they become available.

### Eligibility and authorization

Eligible applicants may be any type of legal entity qualified to hold land, which may include individuals, cooperatives, nonprofits, corporations, or tribal or governmental entities. Entity types other than individuals must have a clear organizational and decision-making structure established. These entity types will also be required to demonstrate that their application is prepared and authorized consistent with their corporate governance, and must submit a formal board resolution or other formal statement issued by their governing body authorizing their application. They must also provide copies of current bylaws, operating agreements, and other governance documents as requested by Ag + Open Space.

### Minimum qualifications

For this pilot, Ag + Open Space believes that applicants with moderate to significant agricultural production and business experience will have the greatest likelihood of establishing and/or supporting long-term successful farm business(es) on a property, thus fulfilling the program goals. This would typically consist of approximately 5 years of relevant experience, some of which could be achieved through relevant education and qualifications. The stage 1 application will help Ag + Open Space determine whether applicants meet this threshold. Please note that applicants **are not** required to own, or have owned in the past, their own property or their own farm business.

Below are some examples of the types of experiences or qualifications that a qualified applicant might have:

**Farming or ranching** experience, education, or qualifications may include but are not limited to:

- Farmworker experience/farm or ranch employment
- Farm or ranch management or operation
- Indigenous land management experience
- Farm or ranch apprenticeship
- Incubator farm training
- Living and/or working on a family farm or ranch
- Significant agricultural production experience through FFA or 4-H
- College or high school coursework in agriculture and related topics
- Other agricultural education, programs, certificates, or training
- Other relevant experience

**Business-related** experience, education, or qualifications may include but are not limited to:

- Managing, operating, or participating in decision making at an agricultural business or other type of business
- Experience with budgeting, accounting, or record-keeping, as a treasurer, accountant, or similar roles, in a paid or a volunteer position
- College or high school coursework in business and related topics
- Other financial or business education, such as participation in a business skills program, an agricultural business certificate, or significant financial or business skills development and practice through FFA or 4-H
- Other relevant experience

## 2. Identify high-priority property

Ag + Open Space will begin piloting the Buy-Protect-Sell program by purchasing and selling one property. Ag + Open Space will find and select a property to conserve that will support Ag + Open Space's mission, including by forwarding the Farmland for All program goals listed above; and which will meet the typical needs of farmers and ranchers seeking land in Sonoma County.

Properties must have the following characteristics:

- Willing seller and clear title
- Zoned LIA, LEA, DA, or AR
- Legal access to the property, such as a driveway onto a public road
- Agricultural use on the property will not harm sensitive species or habitats
- Resilience to current and expected future extreme weather conditions
- Appropriate soils and water access to support a successful agricultural operation
- No known environmental contamination

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

- High risk of subdivision and/or conversion to non-agricultural use which can be reduced or eliminated through the use of Ag + Open Space's conservation tools
- Appropriate size (approximately 5-50 acres of productive agricultural area)
- Appropriate location (within an approximately 15-minute drive of market opportunities, and near other agricultural properties)
- Flat topography or topography with only minor hills
- High-quality agricultural soils

- Agricultural infrastructure, housing, and utilities (electricity and septic/sewer connection)
- Agricultural production on property could provide community benefits, for example by providing access to fresh produce for a nearby community
- Protection supports other conservation goals and priorities identified in the Vital Lands Initiative, in addition to agricultural protection

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

### **3. Purchase property**

Once a property is determined to meet the criteria described above, Ag + Open Space will carry out due diligence and will develop and sign a purchase agreement with the landowner, conditional on approval by the Ag + Open Space Board of Directors and other conditions as appropriate. The property will be appraised to determine the price at which Ag + Open Space will purchase it. Appraisals are performed by independent appraisers, and will be reviewed by an independent appraisal reviewer and presented to the Ag + Open Space Fiscal Oversight Commission. Ag + Open Space cannot pay more than the appraised fair market value for a property.

Once Ag + Open Space has concluded its due diligence and all of the purchase agreement conditions are met, the property will be sold to Ag + Open Space. Ag + Open Space will then own the property until it can be sold to a selected buyer. Alternatively, the existing landowner may be willing to hold the property until Ag + Open Space selects a buyer, and the property will be both bought and sold in a simultaneous transaction.

All transactions are contingent on final approval from Ag + Open Space's Board of Directors.

### **4. Design permanent protections for property**

Ag + Open Space will develop a conservation easement, agricultural conservation covenant, and affordability covenant for the property. Each of these restrictions is described in further detail below. Each restriction is permanent, and will continue to apply to the property even if the property is sold or otherwise transferred to a different owner in the future. These restrictions may lower the appraised value of the property, potentially making the land more affordable, and will also ensure that the property will remain in productive agriculture for generations to come.

#### **Conservation easement**

An Ag + Open Space conservation easement is a legal agreement between a landowner and Ag + Open Space that permanently limits uses of the land in order to protect its agricultural, scenic, natural, and open space conservation values. Each conservation easement is tailored to a specific property. It allows

landowners to continue to own and use their land, and to sell the property or pass it along to their heirs. Subsequent owners are also bound by the terms of the conservation easement, thus preserving the land in perpetuity – in other words, forever.

The conservation easement that will protect this agricultural property will allow the uses necessary to maintain a viable ag operation, while limiting development and alteration of natural features or habitat on the property. Some activities on the property may require advance notice to or approval from Ag + Open Space to ensure that they are carried out in a way that is consistent with the terms of the conservation easement. The conservation easement will also prohibit subdivision of the property.

### Agricultural conservation covenant

An agricultural conservation covenant requires that the property remain in continued agricultural use. While a conservation easement typically sets forth what a landowner **cannot do** on the land, an agricultural conservation covenant describes what a landowner **must do** on the land. Like a conservation easement, each agricultural conservation covenant is tailored to the specific characteristics of a given property. For the Buy-Protect-Sell pilot, the agricultural conservation covenant will be designed to balance the goals of the Farmland for All program with sufficient flexibility to ensure that landowners can respond to changing conditions, both on- and off-farm. Below is an overview of the covenant terms that will be used for the Buy-Protect-Sell pilot.

#### *Agricultural use requirement*

- The landowner will be required to keep a minimum amount of the property in “agricultural use” (defined below) at any given time. Generally, this minimum amount would be 75% of the “production area” (defined below) of each property.
- “Agricultural use” means that the land is managed for agricultural production. This includes a wide variety of agriculture, including livestock, bees, fish, poultry and other fowl, and all types of crops permitted by the conservation easement. Production should be on a scale reasonably commensurate with the property’s capacity for commercial agricultural production. Other activities and uses that are related to agriculture, such as processing, compost generation, direct-marketing and sales, personal gardens, and pet animals will not qualify as agricultural use.
- “Production area” is defined as the area of the property suitable for agricultural production that does not contain sensitive natural resources or buildings.
- The landowner may fulfill this requirement by leasing the property to one or more qualified tenants.

#### *Additional agricultural conservation covenant terms*

- Depending on the characteristics of the specific protected property, Ag + Open Space may include additional terms in the agricultural conservation covenant. These may include restricting the types of crops or other products which may be produced on the property, requiring use of a management plans to address certain agricultural conservation values, and/or requiring the landowner to provide or allow a limited number of public events for agricultural education.

### *Determining compliance*

- Compliance with the agricultural use requirement will be based on a 3-year rolling average of the acreage actually used for agricultural production. The landowner will be required to keep records demonstrating compliance and to allow Ag + Open Space to review them at any time.
- If the landowner wishes to reduce or pause agricultural production for a certain period in order to support improved soil health, they may develop a soil health plan and submit this plan to Ag + Open Space for approval.
- If the landowner cannot meet the requirements for a limited period (for example, due to illness), they may request a hardship waiver to be excused from these requirements for up to 3 years.
- If circumstances such as wildfire, flood, or extreme drought make it temporarily impossible to continue agricultural production on the property, the agricultural conservation covenant may be put on hold until farming is feasible again.

### *Ag + Open Space's option to lease*

- If the landowner does not meet the requirements of the agricultural conservation covenant and does not find a tenant to fulfill the requirements on their behalf, Ag + Open Space will have the right to find a qualified agricultural tenant to farm the property. To provide this option to Ag + Open Space, the landowner and Ag + Open Space will record an offer of dedication of agricultural lease.

### *Affordability covenant*

Ag + Open Space will also apply an affordability covenant to the property protected through this pilot. This covenant will aim to enhance equitable access to land by restricting the maximum increase in the price of the property for subsequent sales. This maximum price increase will be set based on an index of inflation, such as the Area Median Income (AMI) or Consumer Price Index (CPI) during the time between the initial sale by Ag + Open Space and subsequent sales. Investments made by the landowner will be excluded from such a resale price cap.

The affordability covenant will also establish certain requirements for future buyers, in order to ensure that future owners may reasonably be expected to operate the property in compliance with the terms of the agricultural conservation covenant and all other deed restrictions. To make this determination, Ag + Open Space may assess the qualifications and experience of prospective buyers or may require them to have committed to a long-term lease to a qualified tenant.

## **5. Application stage 2: select buyer for specific property**

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



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

Interested applicants will be invited to attend a farm visit where they can view the property and ask additional questions. Attendance at the site visit will be a required part of the application process. This site visit will be conducted in English and Spanish, as well as other languages as needed and feasible.

Following the farm visit, applicants will be invited to submit a property-specific Farm Business Proposal describing their farm business plan and vision for management of the property. Ag + Open Space will develop an optional template for the Proposal, which will include categories such as the following:

- A general ag production plan
- A sales/marketing plan for ag products
- Plans for any other on-farm income streams
- Major expected expenses such as infrastructure improvements or equipment purchases and plans to finance them
- Brief description of other potential uses for the property, such as outreach and education, peer mentorship, habitat restoration, etc.
- Discussion of financial readiness, including a plan to access capital for purchase of the property and for initial investments such as infrastructure improvements
- Description of how the proposal meets the goals and objectives of Ag + Open Space and the Farmland for All program in particular, including (if applicable) how it will provide community benefits.

The Buyer Assessment Panel will review the proposals and will then conduct one or more rounds of interviews with top applicants.

The Panel will use the proposals and interviews to assess each applicant's:

- **Qualifications:** Experience, skills, or qualifications related to farm or ranch operation or management; business operation or management; marketing; community engagement; knowledge of Sonoma County's local market, regulatory, and other conditions; and other relevant areas.
- **Vision:** A plan to manage the property in a manner consistent with its features and productive capacity, with a strong potential for long-term success. Provision of other community benefits will be a plus.
- **Readiness:** A plan to access the capital, equipment, inputs, and other resources necessary to purchase and operate the property. If comparing between otherwise similarly qualified applicants, applicants who can be financially ready to buy the property within a shorter time frame will be preferred.



- **Other characteristics:** Other characteristics of the applicant which are important to achieving the program goals, but do not fall into the other categories. For example, whether the applicant resides or works in a disadvantaged community, whether the applicant has experience as a farmworker, and what motivations or needs led the applicant to apply to the program.

The Panel will make a recommendation to Ag + Open Space regarding which applicant(s) are most likely to successfully forward the Farmland for All program goals. If, after the proposal assessment process and the interview(s), multiple qualified and competitive applicants are identified, final selection will be made via a random lottery that will be administered in an open meeting.

### Support for applicants

Support will be available to all applicants as they participate in the application process. As the pilot progresses, Ag + Open Space will investigate the needs of applicants and will endeavor to identify resources and support that are responsive to these needs. This support may include working with partners and local experts to provide educational workshops to help applicants navigate the stages of the application process. Support will be made available in both English and Spanish to the extent possible, and it may be possible to provide help in other languages as needed. More information will be shared on the [Farmland for All webpage](#) as it becomes available.

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

Ag + Open Space will sell the property, subject to the conservation easement, agricultural conservation covenant, and affordability covenant, to the selected buyer for the property's appraised value, pursuant to the terms and conditions of the purchase agreement which will be made available to all applicants at the beginning of the selection process. Before the land can be sold to the selected buyer, Ag + Open Space's Board of Directors must approve the buyer, the terms of the conservation easement and other restrictions, and the sale price.

In some cases, Ag + Open Space may conduct a simultaneous transaction, in which the original owner continues to own the land until Ag + Open Space has selected a buyer, allowing us to purchase the property and sell it, subject to the conservation easement and other restrictions, at the same time. In other cases, Ag + Open Space may purchase the property and hold the property title temporarily until a buyer is selected.

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

## **7. Monitor property in perpetuity**

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

Ag + Open space strives to develop partnerships with our easement landowners, collaborating to support them as they address goals and challenges on their property, maintain and enhance the property's conservation values, and otherwise manage and use the property consistent with the conservation easement and other restrictions.