

“Choosing the Right Structure for Organizations Participating in the Mission-Based Food Production Movement.”

Executive Summary

There has been a recent swell of interest in the potential of food production and food sovereignty efforts to not only produce food, but in turn address a range of broader environmental problems and social inequities. A variety of mission-based food production efforts across the U.S., tribal nations, and around the world aim to advance a broad range of goals including but not limited to: sovereign food systems, vocational training, youth development, environmental stewardship, alternative economic structures, and racial justice. A recent New York Times [feature](#) highlighted the way that local food production efforts are collectively working to dismantle and rebuild food systems themselves.

Local efforts tend to embrace multiple programmatic objectives, and often rely on multiple revenue types to support their missions. They take the form of nonprofit urban farms and community gardens, cooperative farms, and food processing social enterprises, just to name a few examples. They often have qualities of social entrepreneurship, striving for revenue-generating models that can sustain their work. Some adhere to traditional business models with mission-based guiding principles; others function as nonprofit organizations, leveraging donations and grant opportunities for their work; some are hybrids with both for-profit and non-profit structures in place. The structural formats of these efforts are almost as varied as the efforts themselves.

As new efforts in this movement continue, proliferate, grow, and formalize, those involved must make distinct choices regarding entity choice and structure. Optimal structures should advance mission and accommodate funding, activities, and operations contemplated. These organizations may wish to conduct significant product sales or fee-for-service activities to fund their enterprise, akin to a business; they may rely on donations and grants for programming, as in a traditional nonprofit organization; they may wish to provide ownership interest to participants, as a co-op or mission-based business; they may rely on use of public or access to private land in a public-private partnership or land trust. They may wish to advocate for policy change related to their mission, and their founders may wish to maintain a certain level of control. All of these considerations should be a part of choosing the right entity and structure.

It's best if a burgeoning, developing, and formalizing effort carefully chooses an infrastructure that takes into account anticipated mission and goals, rather than allow a less thoughtful entity choice result in unanticipated limitations on control, mission, revenue options, or activities. In this article, we set forth key considerations for certain entity type and structural options which may be relevant to this specific group of mission-based enterprises, providing summaries of some of the key considerations for each type. We also provide relevant real-world examples from the broad and inspiring movement of mission-based food production. We hope that this overview can help guide the thinking and further exploration by change agents who are a part of this movement about how to structure their mission-based food production efforts.

Business Model Options and Examples

501(c)3 Nonprofit Organization

Many organizations doing gardening and food production for a broader mission are interested in the possibilities, opportunities, and benefits associated with becoming a tax-exempt nonprofit organization. This format allows organizations to fundraise tax-deductible contributions and write grants for their charitable activities, and clearly signals to stakeholders that the effort is mission-based and structured for the public good. If an organization's main focus and the bulk of its activities relate to education and programming that serves the general public (for example, teaching youth about gardening, educating the general public about growing food or nutrition, or running a vocational or rehabilitative training program related to a food industry), it may be able to become a nonprofit organization, even with more traditional "business-like" activities such as sale of produce as a part of its overall portfolio. However, there are eligibility and compliance requirements which should be carefully considered.

To be structured as a 501(c)3 tax-exempt nonprofit, an organization must demonstrate that it serves a "charitable purpose" as that term is defined by law. The Internal Revenue Code requires that the organization must be "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, educational, or other specified purposes and that meet certain other requirements to be considered tax exempt under Internal Revenue Code Section 501(c)(3)."^[1] Not all food production concepts would fit this definition, so it's important that enterprises carefully consider the guidance on eligible charitable purpose and compare this to their own proposed mission and activities. The key consideration for most food production efforts will be whether the main focus of activities is educational and charitable, for the benefit of the general public. Product sales or other more business-like activities are allowable as a revenue source or ancillary activity serving that greater purpose, but if they are the main focus there could be problems with eligibility.

An organization eligible for and which obtains 501(c)(3) tax-exempt status benefits from not only exemption from tax on its own income and expenditures, but also enjoys eligibility to receive tax-deductible contributions from donors, and grants from private foundations which must limit

their giving to “c3”-designated organizations. Many government grants also specify that c3 status is required of applicants. This access to funding is a significant benefit, especially for efforts that expect to need to raise a large part of their revenue through grants and donations; however, this benefit comes with certain limitations and transparency and governance requirements.

Tax-exempt organization laws specify that no individual may own, control, or be privately inured by a nonprofit organization or its assets. Therefore, nonprofit organizations must be governed by an independent Board of Directors, elected to their positions according to the organization’s bylaws. Founders relinquish legal control of the organization to an independent board -- a factor worth careful consideration for those launching a new endeavor. Nonprofit organizations can support paid staff and independent contractor positions like any other enterprise so long as the Board oversees those expenditures and rates are appropriate. 501(c)(3)-exempt nonprofit organizations are also legally restricted to conducting only *limited* direct and grassroots lobbying, and are *strictly prohibited* from any political activity (even simply posting preferences for candidates or allowing staff or Board members to speak on behalf of the organization in favor of a particular candidate). Therefore, organizations should carefully consider their advocacy agendas prior to selecting this option.

The steps for forming a nonprofit organization include incorporation in the relevant state, forming a board and approving bylaws, and filing an application with the IRS for tax-exemption (including payment of filing fee). Ongoing compliance requires upholding governance and record-keeping, appropriate use and oversight of funds, maintaining “exempt purpose” activities, and annual reporting.

Examples:

Planting Justice (<https://plantingjustice.org/>)

Menikanaehkem Community Rebuilders (<https://www.menomineerebuilders.org/>)

Groundswell Center for Food and Farming (<https://groundswellcenter.org/>)

Alice’s Garden (<https://www.alicesgardenmke.com/>)

F.A.R.M. Cafe (<https://farmcafe.org/>)

Detroit Black Community Food Security Network and D-Town Farm (<https://www.dbcfsn.org/>)

Walnut Way (<https://www.walnutway.org/>)

Women’s Environmental Institute (<https://w-e-i.org/>)

Mentoring Positives (<http://mentoringpositives.org/>)

The Farmory (<https://www.farmory.org/>)

Chrysalis Pops (<https://workwithchrysalis.org/programs/chrysalis-pops/>)

Land Trust

Many organizations producing food for missions related to environmental stewardship, economic justice, and food sovereignty have pursued the option of a land trust to ensure that a key asset upon which such efforts depend -- the land itself and its ownership and access -- is secured to serve the organization's purpose.

Land trusts take various forms but all relate to ownership or use of land for a mission-based purpose. Land trusts are often in the form of a nonprofit organization that acquires or stewards land, or access to land in the form of easements. Their purposes are often focused on environmental conservation or equitable economic development, limiting the use of the land to a specific purpose, significantly mitigating private control of land use. Land trusts depend upon the ability to acquire land to dedicate to the mission, either through the acceptance of donations, cooperating with landowners to gain access to easements, or purchasing property. Choosing the best ways to structure or use a land trust will depend upon the proposed purpose and protection intended for the land, and how the land is acquired or accessed. Holding land in trust may also be a part of a nonprofit organization's broader range of activities. Land trusts can be formed through trust documents, which are contractual relationships that owners enter into to prescribe land use and purpose, and are also subject to any applicable property and other laws in the relevant jurisdiction.

Examples:

Northeast Farmers of Color Land Trust (<https://nefoclandtrust.org/>)

American Farmland Trust (<https://farmland.org/>)

Kingston Land Trust (<https://kingstonlandtrust.org/>)

Black Family Land Trust (<https://www.bflt.org/>)

Marin Agricultural Land Trust (<https://malt.org/>)

Kumeyaay-Digüeño Land Conservancy (<http://www.kdlc.org/>)

Maine Farmland Trust (<https://www.maineFarmlandtrust.org/>)

Vermont Land Trust (<https://vlt.org/>)

Cooperative

Many food production enterprises have chosen the cooperative model to democratize and engage stakeholders in making and distributing food. From traditional dairy cooperatives which help individual farmers leverage their collective trading power and shared resources, to storefront food cooperatives where consumer members benefit from ownership in conscious food marketplaces, cooperatives have a long and varied history in mission-based food production. Drawing on an even broader and longstanding tradition of using cooperative models to address societal, economic, and power inequities, recent food movement efforts, especially worker-owner co-ops, have used this structure to create alternative ownership which allows the collective of active contributors to the overall enterprise to direct and benefit from its efforts.

A cooperative, or a “co-op” is a business that is owned, controlled by, and benefits members who participate in the enterprise in a democratic manner. Members acquire ownership through their financial contributions or efforts, collectively control it through voting or electing its board, and receive the benefit of its earnings through distributions, often based on owners’ level of ownership or participation in the cooperative. Co-ops can be found across the U.S. in nearly every sector of the economy and are governed by the relevant statutes in their respective states. Details on structure can differ from jurisdiction to jurisdiction, but generally, cooperatives are created by people who have a common and specific need or interest and are willing to work together to operate and organize a company that will meet that need. Variations of co-ops can be distinguished by types of members -- based on their manner of actively participating in the effort -- ranging from consumer, worker, producer, purchaser, and multi-stakeholder. Each of these types of cooperatives have been used for food production enterprises, ranging from worker-owned farms, to dairy producer co-ops, to consumer-owned food co-ops. Another benefit recently cited by some mission-based food production groups is the ability for undocumented individuals to legally be members and benefit from cooperative ownership, whereas traditional employment options may be more limited for this group.

In general, these structures can be used to generate mission-based products and services, build community-based food systems, create employment and broad-based ownership, promote access to capital and labor rights -- in turn, addressing historic and present-day inequities. However, cooperative structures and entities can be legally complex, and are best deployed when the structure is carefully customized to suit the goals and stakeholders at the heart of a particular effort -- while remaining compliant with applicable law. Thus, professional advice and careful structuring is particularly important in exploring cooperative options.

Examples:

Worker Cooperatives:

Rock Steady Farm and Flowers (<https://www.rocksteadyfarm.com/>)

Cooperativa Tierra y Libertad

(<https://ussen.org/2018/08/06/cooperativa-tierra-y-libertad/>)

Multi-stakeholder Cooperative:

Fifth Season Cooperative (<http://www.fifthseasoncoop.com/>)

Marketing and Distribution Cooperative:

Shared Ground Farmers Co-op (<https://www.sharedgroundcoop.com/>)

Producer Cooperative:

SLO Farmers Co-op (<https://slofarmersco-op.com/>)

Organic Valley Cooperative

(<https://www.organicvalley.coop/about-us/organic-food-co-op/>)

Consumer Cooperative:

Seward Community Co-op (<https://seward.coop/>)

Limited Liability Corporation (LLC) or other traditional business model

Many food producers are best served by simply forming a traditional business entity -- usually in the form of an LLC. Sole proprietorships and corporations are also forms of traditional business entities that can be used. If the goal of a food enterprise is to make and sell a quality product or service which promotes a bigger mission, a traditional business model may be appealing because it is arguably the simplest and most flexible in terms of control and compliance. Many impressive and effective values-driven restaurateurs, farmers, makers and entrepreneurs contribute every day to and creating better food systems, healthier food options, dignified employment, land stewardship and environmental goals, and more equitable food access through traditional business models which make and sell great food products.

All business models generally allow for individual business owners to control and retain the profits from an enterprise; this holds true from complex corporations with many shareholders to the most simplistic form of business, a sole proprietorship (unincorporated individual ownership of a business). The most popular business form is a limited liability company (LLC), which is owned and controlled by its "member" owners. An LLC can be organized for any business purpose. The ownership requirements are made at the discretion of the members, according to an Operating Agreement put in place when the LLC is formed. The Members may agree to and prescribe through the Operating Agreement various details regarding how the organization is managed, how decision-making occurs, and how to allocate profits and losses. The business is usually financed by members' investments and retained profits, with distributions to members of some profits, as applicable and as determined appropriate by members. As their entity type name implies, members are protected from liability arising from the activities of the LLC so long as proper business practices are upheld to establish a clear separation between its members activities and assets and those of the LLC. LLCs are usually considered the most simple and easy-to-manage entity type, and have a maximum amount of flexibility about types of activities. While they are business entities, they can conduct any number of mission-based activities as the Members may prescribe. They also enjoy the freedom to conduct advocacy and political communications and activities. Another benefit recently cited by some mission-based food production groups is the ability for undocumented individuals to legally acquire and benefit from LLC ownership, whereas traditional employment options may be more limited. Similar considerations may apply to other types of business entities, including corporations and limited liability partnerships, if they are owned by a small number of individuals or entities which have affirmatively agreed to the goals of the entity. All such business entities may have default legal obligations to make decisions that will maximize their members' or shareholders' profit, so in the event that a traditional business entity is being explored to host a mission-based enterprise, it's important to have clarity about who the owners will be and how mission-based goals will be agreed to and balanced against profit-related goals and duties.

Examples:

Sankofa Farms LLC: <https://www.sankofafarmsllc.com/>)

Full Circle Community Farm (<https://www.fullcircle.farm/>)

Winter Green Farm (<http://www.wintergreenfarm.com/>)

Sylvanaqua Farms (<https://www.sylvanaqua.com/>)

Genuine Foods (<https://www.genuinefoods.com/>)

Tandem Restaurant (<https://www.tandemmke.com/>)

Benefit Corporation and Certified B Corps

In addition to the option to conduct mission-based food production work in a traditional business entity, there is also now an option to strengthen the “mission-based” aspects of a business in the form of a “benefit corporation,” a relatively new type of entity available in a majority of states. Many food production enterprises have chosen this route to allow for a business-like focus -- product sales, for example -- while clearly signaling to stakeholders and holding itself accountable to a greater, stated purpose. Benefit corporations and Certified B Corps are frequently, mistakenly, conflated and perceived to be one and the same. However, “Certified B Corps” are actually benefit corporations which have opted to receive third-party certification from the organization B-Lab as organizations that uphold certain standards for social and environmental impact.

Benefit corporations are available as a legal entity type are available in jurisdictions that have passed benefit corporation legislation; currently, 37 states have statutes in place which allow formation of such entities.^[5] Benefit corporations are intended to allow a business to state and operate in furtherance of a public benefit, and to balance that with its value creation. Owners and a board of directors govern the organization, much like a traditional corporation. Unlike a traditional corporation, a stated public benefit and annual reporting to shareholders or members on the public benefit, is often required. Benefit Corporations can be operated and controlled by owners with a flexibility similar to traditional business organizations. Owners can retain profits from the business, but there is an official recognition that profit is balanced with the public purpose. Unlike nonprofit organizations, benefit corporations can have a flexible purpose which may focus on business-like activities, be controlled by and create personal benefit for owners, and may take issues-based and political positions without restrictions.

Certified B Corps are benefit corporations which receive a third-party certification administered by the nonprofit organization “B-Lab”, which verifies an organization’s performance on their “B Impact Assessment.”^[7] The assessment measures social and environmental performance, public transparency, and legal accountability to balance profit and purpose through a rigorous assessment of a company’s impact on its workers, customers, community, and the environment. Benefit corporations may choose to be certified B Corporations as well, though they are not required to do so; conversely, traditional businesses and co-ops may seek B-Lab certification based on the assessment measures which are relevant for their enterprise.

Example:

Plum Organics (<https://www.plumorganics.com/benefit-corp/>)
Revolution Foods (<https://www.revolutionfoods.com/>)
Hilary's Eat Well (<https://hilaryseatwell.com/>)
Finnriver Farm and Cidery (<https://www.finnriver.com/>)
Green City Growers (<https://greencitygrowers.com/>)

Mixed and Custom Models

There are many creative ways to use multiple legal entities or customize aspects of legal entities to serve a specific mission, goals, and proposed activities. For example, for-profit LLCs that have a nonprofit sibling entity which conducts charitable and educational activities. Umbrella nonprofit organizations may hold a land trust or have a for-profit LLC subsidiary for streamlined sale of products. Cooperatives may dedicate part of their mission and activities for the benefit of the public in addition to the aspects of their mission which focuses on benefiting their members. Charitable organizations may decide to launch a sibling advocacy organization to be able to do grassroots and direct lobbying without running amok of the limitations on lobbying for 501(c)(3)s.

Examples:

Soul Fire Farm- LLC organized around cooperative principles with a nonprofit educational arm (<https://www.soulfirefarm.org/>)
Agrarian Commons- (<https://agrariantrust.org/agrariancommons/>)
Coop Coffees- cooperative and Certified B Corp (<https://coopcoffees.coop/>)
The Federation of Southern Coops - non-profit cooperative association (<https://www.federation.coop/>)
Iroquois Valley Farmland Reit- Public Benefit Corporation and B Corp Certified farmland finance company (<https://iroquoisvalley.com/>)
Ohe-láku- Among the Cornstalks- Transitioning from a 501c4 to a 501c3 for their education and outreach work, and are establishing a cooperative for their production work (<https://www.facebook.com/AmongtheCornstalks/>)

In Conclusion:

As evidenced by the many inspiring examples we've shared in each section above, there is a diverse range of options for how to optimally structure mission-based food production efforts. In choosing a structure, organizations must weigh key considerations related to activities and advocacy central to mission, decision-making and control of the organization that fits, and appropriate revenue sources and strategies. Ideally, through an upfront analysis of the goals and needs of the organization, the different entity type options and their respective limitations

and benefits, organizations can choose and establish the optimal infrastructure, and then focus passionately on mission, working within the selected operational and legal framework. By conducting the analysis upfront, later unexpected pitfalls or frustrating restrictions are less likely to arise. Further, through the process of selecting and setting up the entity, there's an opportunity to educate and organize founders and those on the requirements and best practices for more technical aspects of operating a new enterprise or organization *before* mission-based work becomes all-consuming. The common goal for all mission-based food production is to contribute to a better world -- through stronger communities, economies, environment, as the case may be -- and the sum of these mission-based efforts can only be maximized if their operational, infrastructural, and legal structures are optimized.

Before going through the process to change or create a legal entity, it is critical to obtain the right professional services -- specifically, legal and accounting/tax advice -- if at all possible. While weighing any of the above entity options, it's advisable to explore further, with the input of applicable experts, tax implications, the duties and authorities of individuals fulfilling specific roles and positions within the various entities, and liability limitations relevant for that entity.

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[¹] More information on 501(c)3 IRS requirements here:

<https://www.irs.gov/charities-non-profits/exempt-organization-types>

[²] More information on cooperatives here: <https://uwcc.wisc.edu/>

^[3] More information on cooperative principles here:

<https://ncbaclusa.coop/resources/7-cooperative-principles/>

^[4] More information on WI cooperative legal entities here:

https://resources.uwcc.wisc.edu/Legal/WIstatute185v193_2019.pdf

^[5] More information on Benefit Corporations here: <https://benefitcorp.net/>

^[6] More information on the 2017 Wisconsin Act 77 here:

<https://www.bizjournals.com/milwaukee/news/2017/12/14/wisconsin-creates-benefit-corporation-s-a-new-for.html>