**CONSERVATION FINANCING**

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**Abstract**

As stewards of the land they own, farmland owners are in a wonderfully unique position to protect water, soil, and wildlife now and long into the future. The purpose of this publication is to offer guidance to farmland owners on the farm transfer process when conservation and sustainable agricultural practices are desired. A variety of farm transfer tools that can help landowners achieve these conservation goals are discussed below.

**Contents**

Introduction

Selling land

Selling a portion of land to a sustainable farmer

Contract for deed

Agricultural conservation easement

Deed restrictions and covenants

Long-term leases

Revocable and irrevocable trusts

A bequest: Frantzen Farm example

USDA conservation programs

Conclusion

Further resources

**Introduction**

Many landowners, whether retiring from a lifelong career of farming or inheriting land from parents who farmed, want to leave a legacy of conservation and sustainable agriculture. They are looking for ways to pass on the farm to a farmer and/or new owner who shares this vision. There are many ways to do this, depending on the values and priorities of the landowner.

For instance, some landowners want to keep the farm in the family, while others hold this as a lower priority or perhaps don’t have a family heir. Another consideration is the extent to which landowners want to stay connected to the land over time. Farmland transfer involves transferring equity, management, and income potential to the next generation. Some landowners are ready to part with all of these rights and responsibilities at once, while others prefer a more gradual process, or perhaps depend on the income from renting the land. Whether transferring the land by selling, leasing, gifting, willing it through an estate plan, or a combination of these methods, landowners can include provisions to encourage and/or ensure conservation practices.

Still another goal landowners may have—and one that may tie nicely with the desire to promote sustainable agriculture—is to help a beginning farmer get started. While beginning farmers need land and capital, they can in exchange offer energy; time; a certain level of knowledge, skills, and experience; a shared commitment to sustainability and conservation in some cases; and access to USDA beginning farmer loans and related resources.

Indeed, a ground swell of support for local, sustainable agriculture has swept forward a variety of initiatives to support these farmers financially and otherwise. The Slow Money movement is an example of how beginning farmers can tap into a greater community commitment to sustainable agriculture. The basic concept that socially minded individuals or groups can lend their money or invest it in sustainable farmers is taking shape in communities throughout the country. While landowners should be aware of these options as puzzle pieces that the beginning farmer brings to the table, the remainder of this article focuses on what the landowner can do to encourage sustainable agriculture in the process of farm transfer.

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| **Methods of Farm Transfer** |
|  | **Sale** | **Lease** | **Gift** | **Estate plan** |
| *Mechanisms to facilitate conservation outcomes* | -Contract for deed-Deed restriction-Restrictive covenant-Agricultural conservation easement-Splitting land to sell part at market rate and part for conservation | -Long-term lease with conservation provisions-Conservation incentives through cost sharing and/or risk sharing-Option to buy and/or right of first refusal | -Gift of land to a land trust (estate tax burden lifted on that property) | -Revocable or irrevocable trust with provisions for conservation -Bequest to a land trust or non-profit  |

**Selling Land**

Selling a farm outright may be the most limited option in terms of ensuring conservation stewardship since (unless otherwise specified in a deed restriction) you lose all interest and claim to the land once the sale is complete—even if it’s to a family member. However, you do have control over how and to whom you advertise the sale. For instance, if you sell at auction, the land will simply go to the highest bidder. On the other hand, if you advertise it with a LandLink program or sustainable agriculture organization, you have an opportunity to attract conservation-minded farmers, especially if you already have these features on the land (organic certification, buffer strips, etc.). You could even interview potential buyers to get a feel for their vision for the land.

*Further resources:*

FarmLink programs facilitate farm transfer by providing services to help connect retiring farmers or landowners with beginning farmers. Programs are listed by state. www.farmtransition.org/netwpart.html

**Selling a Portion of the Land to a Sustainable Farmer**Depending on how much land you have and how it’s configured, an option may be to separate out a portion of land with a greater conservation value to transfer to a sustainable farmer (perhaps the farmstead and surrounding land). This arrangement allows the flexibility to sell some land at top dollar on the open market in order to achieve financial objectives, while creating more favorable terms for a sustainable farmer on another part of land. If your successor is raising horticultural crops and/or small livestock, it’s possible that he or she doesn’t need or even want more than a couple dozen acres.

**Contract for Deed**

With a *contract for deed* sale, the landowner sells the land on contract over the course of several years to a beginning farmer, who makes periodic payments with interest over that period of time. The terms of the contract can include specific language about conservation standards and/or allowable agricultural practices, similar to provisions that might be spelled out in a long-term lease (see below). A contract for deed sale may be of interest to beginning farmers who are unable to obtain financing from more traditional sources. In addition, a seller/landowner could consider assisting a beginning farmer by offering more favorable terms than a bank, such as a lower interest rate or lower down payment. A potential financial benefit to the landowner is the ability to spread any capital gain tax from the sale out over many years.

A contract for deed arrangement tends to work best between a seller and buyer that have a solid and trusting relationship, since there are many risks involved for both parties, particularly the buyer. Title to the land is held by the landowners until the final payment is made, and none of the payments up to that point count toward equity in the farm for the purchaser; defaulting on the loan means forfeiting all previous payments. The USDA Farm Service Agency offers some protection (though mostly to the benefit of the seller) through its Land Contract Guarantee Program, which can help avert forfeiture in case the buyer misses a payment.

*Further resources:*

Contract Land Sales, National Sustainable Agriculture Coalition
<http://sustainableagriculture.net/publications/grassrootsguide/farming-opportunities/contract-land-sales/>

Frequently Asked Questions on Contracts for Deed in Minnesota, Farmers Legal Action Group (FLAG)
[www.flaginc.org](http://www.flaginc.org)

 Installment Sale Contracts for Beginning Farmers, Partnership for America’s New Farmers http://americasnewfarmers.org/installment-sale/

**Agricultural Conservation Easement**

Owners of farmland near the edge of large metropolitan areas can consider getting an agricultural easement on their land before selling it. This would restrict current and future use to agriculture and potentially lower the selling price for a beginning farmer. An easement reduces the market value of the land by preventing it from ever being developed for residential or commercial purposes.

Easements can serve a variety of conservation purposes, such as protecting farmland from urban sprawl, ensuring historic or cultural preservation, or creating permanent protection of wilderness or scenic areas. The conservation provisions of any given easement depend on the priorities of the landowner granting the easement as well as those of the organization or agency that will hold and enforce the easement. Therefore, an agricultural easement could specify the types of agricultural practices allowed on the land, such as organic production or particular conservation practices. Such provisions could be similar in language to the conservation provisions one might include in a long-term lease (see below). But, unlike a long-term lease, since an easement is meant to last forever, it should be created in a way that it can be interpreted and implemented over time, regardless of societal or environmental changes.

Where land prices are driven by agriculture (rather than development), agricultural easements do not necessarily lower the price and may therefore be less useful in facilitating transfer to a beginning farmer. Another caveat is that easements are not ubiquitously available since the eligible non-profit organizations and government agencies that handle them are not evenly spread out across the country, nor does every piece of land necessarily qualify for an easement. Often, the conservation value of the land is taken into consideration before a decision is made by an easement holder to accept a donation of an easement. Where an easement is an option for a landowner, a financial incentive to do so is a reduction in his or her estate tax.

*Further resources:*

Land Trust Alliance, a national conservation non-profit organization, has an online database of state, local, and national land trusts operating throughout the United States. <http://findalandtrust.org/>

U.S. Department of Agriculture (USDA) has a variety of conservation easement programs that provide financial and technical assistance to landowners to restore and provide long-term protection to different types of agriculture lands. This includes the Wetland Reserve Program (WRP), Grassland Reserve Program (GRP), Healthy Forest Reserve Program (HFRP), and the Farm and Ranch Land Protection Program (FRPP), all of which are listed at [www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements](http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements).

**Deed Restriction or Restrictive Covenant**

Similar to an easement, a deed restriction limits how the land can be used by the subsequent owner. A deed restriction is easier to create than an easement, but it is not as enforceable and may not offer long-term protection. A restrictive covenant is a type of deed restriction (or it can be another form of written agreement) that applies to two or more people on neighboring land for their mutual benefit; these parties are also mutually responsible for enforcing the rules of the covenant. A restrictive covenant applies to current and future owners of the land, although some covenants are not perpetual.

A mutual covenant could potentially be a way to create a sustainable agriculture cluster/community by selling land to a group of owners who will hold each other accountable to upholding the terms of the covenant by practicing sustainable agriculture.

*Further resources:*

Land Trust Alliance Fact Sheet: Conservation Easement vs. Deed Restriction <http://www.landtrustalliance.org/conservation/documents/CE-deed-restriction.pdf>

**Long-Term Leases**

Most landowners are familiar with an annual cash rent, which is appealing in that it’s simple, familiar, requires little planning, and offers flexibility to the landowner to adjust the rent annually. However, annual cash rent does little to build landlord-tenant relationships conducive to expanding conservation and sustainable farming practices on the land. Also, a rent adjustment index that ties the annual rental rate to fluctuations in commodity prices and land value can easily be incorporated into a long-term lease, thus minimizing a key advantage of annual cash rent.

Establishing a long-term lease is a great way to facilitate conservation because it provides security to the operator that investments made in the soil today will benefit that same operator in the future. Furthermore, for the ten­ant operator to utilize USDA’s Conservation Security Program (CSP), he or she must have control of the land for the full five years of a CSP contract. Tenants must also demonstrate control of land for Environmental Quality Incentive Program (EQIP) contracts, which vary in length from one to 10 years.

For the retiring farmer/landowner, a long-term lease is a legal instrument for putting a vision for how the land should be managed into writing. This vision can be spelled out in the form of a comprehensive conservation plan accompanying the lease, with a provision requiring that the conservation plan be followed. Alternatively, a lease can include specific provisions related to crop rotation, pest-management practices, use of riparian buffers, etc.

To encourage adoption of sustainable practices, the lease can also include cost-sharing and/or risk-sharing terms for tenant and landlord to collaborate in making these improvements. Crop sharing, wherein a portion of the harvested crop is paid as rent instead of cash, is a way to spread the risk of implementing new practices between landlord and tenant. Flexible cash rent is another way to share risk by tying the annual rental rate to the annual yield or total revenue. Landowners can also split costs with tenants for inputs such as cover crop seeds, certifications, or new equipment needed to implement sustainable practices.

Renting land is a good option for new farmers because it’s more affordable and less risky than buying land, at least for the first few years of farming. In addition, landowners may choose to offer a graduated rent to help a cash-poor beginning farmer get started. This would involve discounting the rent in the first year and increasing it over the next few years to full market rate. Some Midwestern states (Iowa, Nebraska, and Wisconsin, for example) offer tax credits to landowners who lease land to a beginning farmer, which could offset the cost to a landowner.

A lease can be a stepping stone in the farm-transition process, after which the beginning farmer is ready to buy the land. There are a few ways to prepare for an eventual sale coming out of a long- term lease. The lease agreement can include a Purchase Option, wherein the landowner and tenant set a purchase price up front and rent payments made over the course of the lease period can count toward down payment. Alternatively, the lease can include a Right of First Refusal for the tenant, meaning the land can be sold to a third party only after the tenant has had a chance to purchase the land by matching that third party’s offer.

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Sample conservation provisions (excerpted from Drake Agricultural Law Center’s Sustainable Farm Lease, [www.sustainablefarmlease.org](http://www.sustainablefarmlease.org))

* The Tenant will leave a vegetative buffer \_\_\_feet from any watercourse, stream, or river.
* A cover crop shall be seeded on corn ground harvested for silage.
* If any fieldwork is done in the fall, at least two-thirds of the soil will be left covered with crop residue.
* Tenant will figure credits for manure and previous legume crops before applying additional nutrients.
* Tenant agrees to minimize use of herbicides by employing integrated weed strategies as the primary means of weed control.
* Tenant agrees to minimize use of insecticides by employing pest-management strategies as primary means of pest control.
* Tenant agrees to implement a haying/grazing plan approved by NRCS or landowner.

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*Further resources:*

* Drake Agricultural Law Sustainable Farm Lease
[www.sustainablefarmlease.org](http://www.sustainablefarmlease.org)
* Sustainable Long-Term Farm Leases, Farmers Legal Action Group (FLAG) [www.flaginc.org](http://www.flaginc.org)

**Revocable and Irrevocable Trusts**

For landowners who want to keep the farm in the family—whether or not a family member will farm it—putting the farm in trust offers a mechanism to encourage or require future operators to maintain conservation practices. Essentially, a trust establishes a legally binding management plan for a farm that will survive the settlor (the landowner who establishes the trust). As with an easement or a lease, the terms of a trust can include provisions requiring or encouraging conservation and sustainable agriculture practices. Moreover, a trust lends itself to the enforcement of a conservation ethic in the sense that good stewardship of the soil is essential for preserving the value of the estate for the beneficiaries.

Two basic types of trusts can be established by a landowner during his/her lifetime – revocable and irrevocable. An irrevocable trust cannot be destroyed or altered, not even by the person who created it. A revocable trust, on the other hand, allows for the settlor to manage the trust, to receive benefits from it even though he or she no longer owns the property, and to change the terms of the trust or destroy it. However, after the settlor is no longer living, a revocable living trust becomes irrevocable, or permanent. In some states, a trust can be carried on from one generation to the next in perpetuity. Other states have a “rule against perpetuities,” requiring that a trust be dissolved 21 years after the death of the youngest generation alive when the trust is created.

A trust is governed by a designated trustee (often the settlor for a revocable trust, or a child of the settlor) according to rules created by the settlor, on behalf of one or more designated beneficiaries (often the children or grandchildren), who share the benefit of rental income from the land. This type of land transfer is a good way to distribute benefits to multiple heirs, while also guaranteeing access to the land for an operator willing to farm in a way that aligns with the goals of the trust. In fact, a specific operator could be named in the terms of the trust, and/or a long-term lease could be included as well. This arrangement can benefit the tenant operator by ensuring long-term access to the land while avoiding debt.

Finally, as with an easement, a note of caution should be observed when considering conservation provisions to include in the terms of a trust. Since a trust can last 100 years or longer, it’s important to provide flexibility for the current operator at any given time to respond to societal or environmental changes not foreseen when the trust was created.

*Further resources:*

Trusts as an Estate Planning Tool, Iowa State University (ISU) Outreach and Extension [www.extension.iastate.edu/agdm/wholefarm/html/c4-59.html](file:///C%3A%5Ccathys%5CMISA%202013%5CConservation%20Financing%20Hannah%5Cwww.extension.iastate.edu%5Cagdm%5Cwholefarm%5Chtml%5Cc4-59.html)

Preparing to Transfer the Farm Business, University of Minnesota Extension [www.cffm.umn.edu/publications/pubs/farmmgttopics/transferringthefarmseries.pdf](file:///C%3A%5Ccathys%5CMISA%202013%5CConservation%20Financing%20Hannah%5Cwww.cffm.umn.edu%5Cpublications%5Cpubs%5Cfarmmgttopics%5Ctransferringthefarmseries.pdf)

**A Bequest: Frantzen Farm Example**

Tom and Irene Frantzen are conservation-minded farmers in Iowa, who are also long-time members of Practical Farmers of Iowa (PFI), a farmer-led nonprofit dedicated to on-farm research and education in sustainable-agriculture practices. After careful consideration of a succession plan for their 300-acre farm, the Frantzens decided to bequeath the land to PFI. The bequest specifies that the farm should never be divided or sold and that Tom and Irene’s son James should be the preferred tenant. The core vision is that the farm should always remain intact as a working farm with significant conservation features and that it should remain available as such for generation after generation of farmers, long after even their own son has retired from farming.

In light of steep appreciation of farmland values in the Midwest in recent years, this arrangement makes financial sense for the Frantzen family in several ways. For James, renting land from PFI is more affordable than buying out his two sisters’ inheritances would be. It also provides assurance of long-term access to the land to make a living. As a bequest, this mechanism allows Tom and Irene to continue to own and earn income from the land throughout their retirement. Finally, Tom and Irene’s non-farming daughters will receive their parents’ life insurance proceeds. For all three children, the bequest allows them to avoid estate and inheritance tax on the land.

The Frantzen’s situation may be unique because of their long and trusting relationship with PFI. However, landowners can use similar opportunities to donate or bequeath land to state or local agency or a land-trust organization or conservancy.

**USDA Conservation Programs**

The USDA has a variety of conservation programs that farmland owners can initiate on their land and later transfer through sale or lease to a new owner. This includes the Conservation Reserve Program (CRP), which provides rental payments to farmers for the number of acres of environmentally sensitive land they leave fallow in a long-term (10 to15 years) cover to improve soil, prevent erosion, and provide wildlife habitat. In fact, the Farm Service Agency (FSA) Transition Incentive Program actually encourages the transfer of conservation program land to a beginning farmer by allowing landowners to receive two additional years of CRP payments if they lease the land to a beginning farmer to graze and to use conservation practices.

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USDA conservation programs are administered by the Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS), which are accessible throughout the nation in county and regional field offices called USDA Service Centers. Find the USDA Service Center nearest to you at <http://offices.sc.egov.usda.gov/locator/app>

USDA Natural Resource Conservation Service conservation programs:

* + Wetland Reserve Program [www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/wetlands/](http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/wetlands/)
	+ Grasslands Reserve Program [www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/grassland/](http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/grassland/)
	+ Healthy Forests Reserve Program [www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/forests/](http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/forests/)
	+ Farm and Ranch Lands Protection Program

[www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/farmranch/](http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/farmranch/)

* + Environmental Quality Incentive Program [www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/eqip/](http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/eqip/)
	+ Conservation Stewardship Program
	[www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/csp/](http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/csp/)

USDA Farm Service Agency conservation programs:

* + Conservation Reserve Program[www.fsa.usda.gov/FSA/webapp?area=home&subject=copr&topic=crp](https://www.fsa.usda.gov/FSA/webapp?area=home&subject=copr&topic=crp)
	+ Transition Incentive program[www.fsa.usda.gov/FSA/webapp?area=home&subject=copr&topic=tipr](http://www.fsa.usda.gov/FSA/webapp?area=home&subject=copr&topic=tipr)

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**Conclusion**

Considering that 65 years and older is the fastest-growing age bracket for American farmers, a lot of land is now changing hands. Huge numbers of landowners, whether the retiring farmers themselves or their heirs, are facing big decisions, and many are asking how to promote sustainable agriculture through farmland transfer. Wielding the tools described above to promote conservation may be relatively new territory and may take persistence on the part of landowners. This overview is intended to offer a framework for discussing such options with a legal advisor, accountant, agricultural educators, farmers, and other landowners.

**Further Resources on Farmland Transfer and Conservation**

Midwest resources:

* **Land Stewardship Project** assists beginning farmers in developing viable business plans and connecting with established and retiring farmers to access land and mentorship opportunities.
<http://landstewardshipproject.org/morefarmers>.
* **Renewing the Countryside** offers a variety of information sources on farm succession (monthly radio program, bimonthly newsletter, downloadable publications, case studies), as well as individual assessment and coaching to landowners on the farm-transfer process.
<http://renewingthecountryside.org/farm-transitions>.
* **Farmer’s Legal Action Group** provides legal advice and guidance to farmers on estate planning and related matters.
[www.flaginc.org](http://www.flaginc.org/)
* **Beginning Farmer Center** of Iowa State University offers guidance to farm families on farm succession planning and manages a LandLink matchmaking service to pair aspiring farmers in search of land with retiring farmers. [www.extension.iastate.edu/bfc/publications-and-webinars](file:///C%3A%5Ccathys%5CMISA%202013%5CConservation%20Financing%20Hannah%5Cwww.extension.iastate.edu%5Cbfc%5Cpublications-and-webinars)
* **Women Food and Agriculture Network’s Women Caring for the Land program** provides guidance to women landowners throughout the Midwest to help them develop and implement their conservation goals.
[www.wfan.org/Women\_Caring.html](http://www.wfan.org/Women_Caring.html)
* **Farm Commons** provides legal advice to farmers and landowners through one-on-one assistance, and also links farmers and farm attorneys with information on succession planning and other legal matters.
[www.farmcommons.org](http://www.farmcommons.org/)

National resources:

* **Land Trust Alliance** helps landowners identify strategies for conserving their land, including connecting with a local land trust. [www.landtrustalliance.org/conservation/landowners](file:///C%3A%5Ccathys%5CMISA%202013%5CConservation%20Financing%20Hannah%5Cwww.landtrustalliance.org%5Cconservation%5Clandowners)
* **American Farmland Trust** conducts research, advocacy, and education related to farmland protection.
[www.farmland.org](http://www.farmland.org/)
* **Land for Good** serves farmers and landowners in New England on issues related to farmland access and succession planning, and offers a variety of online resources relevant nationwide.
[www.landforgood.org/resources.html](file:///C%3A%5Ccathys%5CMISA%202013%5CConservation%20Financing%20Hannah%5Cwww.landforgood.org%5Cresources.html)