**CONSERVATION FINANCING**

By Hannah Lewis National Center for Appropriate Technology (NCAT) Agriculture SpecialistApril 2013

**Abstract**

As stewards of the land they own, farmland owners are in a wonderfully unique position to protect the 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 transition process when conservation and sustainable agricultural practices are desired. A variety of legal and financial tools used in the process of farm transfer can help landowners achieve these conservation goals. The “how, when, and why” of using these tools are outlined below.

**Contents**

Introduction

Selling land

Installment sale

Selling a portion of land to a sustainable farmer

Agricultural conservation easement

Deed restrictions and covenants

Long-term leases

Irrevocable trust

A bequest: Frantzen Farm example

USDA conservation programs

Conclusion

Resources

**Introduction**

Many farmland owners, whether they have recently inherited land or have been farming all their lives and are ready to retire, 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 do not see this as a high 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, 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 the desire to promote sustainable agriculture—is to help a beginning farmer get started. While beginning farmers need land and capital, what they can offer in exchange is 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 the greater community’s 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.

|  |
| --- |
| **Methods of Farm Transfer** |
|  | **Sale** | **Lease** | **Gift** | **Will** |
| *Mechanisms to facilitate conservation outcomes* | -Installment sale-Deed restriction-Restrictive covenant-Agricultural conservation easement-Splitting land to sell part at market rate and part for conservation | -Long-term lease-Lease terms that include cost sharing and/or risk sharing-A conservation plan and/or mandatory conservation provisions-Option to buy and/or right of first refusal | -Gift of land to a land trust (estate tax burden lifted on that property) | -Irrevocable trust with provisions for conservation-Can include a long-term lease to a sustainable farmer-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.

**Installment Sale**

With an installment sale (also called a contract 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. This arrangement can be beneficial to a beginning farmer if the landowner offers more favorable terms than a bank, such as a lower interest rate or lower down payment. 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. An installment sale 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.

The USDA Farm Service Agency offers a Land Contract Guarantee Program, which can help avert forfeiture in case the buyer misses a payment.

**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.

**Agricultural Conservation Easement**

Owners of farmland near the urban fringe can consider getting an agricultural conservation easement on their land before selling it, thus restricting current and future usage to agriculture, and potentially lowering 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 in the future. An easement could potentially specify the types of agricultural practices allowed on the land, such as organic production or particular conservation practices. However, 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. A financial incentive for a landowner to take this route is a reduction in his or her estate tax.

Easements are less useful in facilitating transfer to a beginning farmer where land prices are driven by agriculture, in which case a conservation easement is not effective in reducing the price. 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 to create an easement.

**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 offers only short-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 may not be 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.

**Long-Term Leases**

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 the 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 provisions related to crop rotation, pest-management practices, use of riparian buffers, etc. In addition, the lease can include cost-sharing and/or risk-sharing terms for tenant and landlord to collaborate in making conservation improvements.

Renting land is a great option for beginning farmers because it’s more affordable than buying land, while allowing greater flexibility to make changes while still on a steep learning curve in the early years of farming. To make land access even more affordable for a beginning farmer, landowners may choose to offer a graduated rent. This would involve discounting the rental rate in the first year and steadily increasing it over the next few years until it reaches 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.

**Irrevocable Trust**

For landowners who want to keep the farm in the family—whether or not one of their children or grandchildren will farm it—an irrevocable trust can be used to encourage conservation through that transfer. An irrevocable trust is created by the landowner during his/her lifetime, and cannot be revoked or changed once established. Trusts expire after a certain number of years (can be several decades), depending on the state.

The land is placed in the ownership of the trust, which is managed by a designated trustee on behalf of the beneficiaries, who are typically the children or grandchildren of the grantor (the landowner who established the trust). The trust is governed according to rules created by the grantor, which can be crafted to encourage or require conservation or sustainable agriculture practices on the land in perpetuity. The trust can also include provisions to preserve a long-term lease and even specify a particular operator as tenant. This is a good way to distribute the benefits of the land 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. This arrangement may benefit the farmer as well by ensuring long-term access to the land while avoiding debt.

Furthermore, an irrevocable 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. Similar to the tools described above, an irrevocable trust can also include specific language to encourage sustainable agriculture. Again, this should be crafted in a way that balances conservation goals with the flexibility of future operators to manage the farm effectively.

Note: An irrevocable trust is not to be confused with a revocable living trust, which is not as useful in terms of establishing conservation rules.

**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 U.S. Department of Agriculture (USDA) offers a variety of programs to assist landowners with conservation, many of which can be utilized in the context of a farm transition. A clear example of this is FSA Transition Incentive Program, which allows 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.

Several other conservation programs available through the USDA are listed below. These programs award in contracts that last several years and are designed to remain with the land, meaning that they may be transferred to the new landowner.

* Conservation Reserve Program (CRP)
* Conservation Reserve Enhancement Program (CREP)
* Wetland Reserve Program (WRP)
* Wildlife Conservation Land Program (WCLP)

**Conclusion**

Considering that 65 years and older is the fastest-growing age bracket for American farmers, a lot of land is now changing hands. This means huge numbers of landowners, whether the retiring farmers themselves or their heirs, are facing these kinds of decisions. Furthermore, it’s likely that, more so now than in the past, landowners are asking how to promote sustainable agriculture through farmland transfer. Thus, wielding the legal tools described above to promote conservation may be relatively new territory and may take some persistence on the part of landowners. It also means there may be a wealth of ideas to garner from talking to other landowners and advisors about these questions. The tools described above are meant to help landowners explore ways to leave a legacy of sustainable agriculture and to offer a framework for discussing such options with a legal advisor, accountant, agricultural educators, farmers, and other landowners.

**Resources**

* Drake Agricultural Law Sustainable Farm Lease
www.sustainablefarmlease.org
* Women Food and Agriculture Network Women Caring for the Land www.wfan.org/Women\_Caring.html
* FarmLink (Midwest or national)
[www.farmlink.net](http://www.farmlink.net/en/index.html)
* USDA Natural Resource Conservation Service
[www.nrcs.usda.gov](http://www.nrcs.usda.gov)
* USDA Farm Service Agency
[www.fsa.usda.gov](http://www.fsa.usda.gov)
* Renewing the Countryside
www.renewingthecountryside.org
* Farmer’s Legal Action Group (FLAG)
[www.flaginc.org](http://www.flaginc.org/)
* Farm Commons
[www.farmcommons.org](http://www.farmcommons.org/)
* American Farmland Trust
[www.farmland.org](http://www.farmland.org/)
* Land Trust Alliance
[www.landtrustalliance.org](http://www.landtrustalliance.org/)
* Land for Good
[www.landforgood.org](http://www.landforgood.org/)
* University of Vermont FarmLASTS
[www.uvm.edu/farmlasts/](http://www.uvm.edu/farmlasts/)