Perennial Tenure:
Secure land access for agroforestry

Keefe Keeley – Savanna Institute
“Enhancing Rural Economies through Agroforestry: Assessing Emerging Opportunities”
Washington, D.C. – March 20, 2018
Why it matters:
Much of U.S. farmland is leased

- **Land in farms** (911 million acres):
  - Owner-operated: 61%
  - Rented from an operator: 8%
  - 31% Owned by non-operator landlords

- **Farmland owned by non-operator landlords** (283.4 million acres):
  - Corporation, trusts, or other owner: 10% of all farmland
  - Individuals/partnerships: 21% of all farmland

Note: Data exclude Alaska and Hawaii.
Why it matters:
Beginning farmers especially rely on leased land

Percent of land in:
- Full-owner operations
- Part-owner operations
- Full-tenant operations

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Full-owner</th>
<th>Part-owner</th>
<th>Full-tenant</th>
</tr>
</thead>
<tbody>
<tr>
<td>34 years or younger</td>
<td>8</td>
<td>66</td>
<td>27</td>
</tr>
<tr>
<td>35 to 44</td>
<td>15</td>
<td>70</td>
<td>15</td>
</tr>
<tr>
<td>45 to 54</td>
<td>24</td>
<td>67</td>
<td>9</td>
</tr>
<tr>
<td>55 to 64</td>
<td>33</td>
<td>60</td>
<td>6</td>
</tr>
<tr>
<td>65 years or older</td>
<td>43</td>
<td>51</td>
<td>7</td>
</tr>
</tbody>
</table>

Note: Data exclude Alaska and Hawaii.
Why it matters:
10% of farmland expected to transfer in next 4 years

Land in farms (911 million acres)
- Not expected to transfer: 89.8%
- Transferred: 10.2%

Transferred land by expected method (93 million acres)
- Trust: 37%
- Will: 12%
- Sell to a relative: 14%
- Gift/other: 14%
- Sell to a non-relative: 23%

Note: Data exclude Alaska and Hawaii.
Land access & tenure: *Simplified*

Access:
- Acquire
- Lease

Tenure:
- Ownership
- Tenancy
<table>
<thead>
<tr>
<th>WHAT IS MY GOAL FOR ACCESSING MY FARMLAND?</th>
<th>WHICH ARRANGEMENTS MIGHT WORK FOR ME?</th>
<th>WHO MIGHT BE INVOLVED?</th>
</tr>
</thead>
<tbody>
<tr>
<td>I want to own a farm now (OWNERSHIP)</td>
<td>Whole Shared Ownership Interests</td>
<td>Private bank</td>
</tr>
<tr>
<td></td>
<td>Partial Ownership Interests</td>
<td>State/Federal lender</td>
</tr>
<tr>
<td></td>
<td>Path-to-Ownership Options</td>
<td>Seller-financer</td>
</tr>
<tr>
<td></td>
<td>No Interests (Rights) in Land</td>
<td>Community/Alternative</td>
</tr>
<tr>
<td></td>
<td>Leasehold Interest in Land</td>
<td>lender</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Family/trust</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Employer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other private landowner</td>
</tr>
<tr>
<td>I want to own a farm in the future (PATH TO OWNERSHIP)</td>
<td></td>
<td>Private landowners</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(individual, family or group)</td>
</tr>
<tr>
<td>I want to rent a farm (TENANCY)</td>
<td></td>
<td>©2017 Land For Good</td>
</tr>
</tbody>
</table>
Farmland transfer: An inescapable opportunity

• ~40% of U.S. agricultural land is likely to transfer in next 20 years

• Succession planning improves conditions for long term investments

• Transfer is window for support: e.g. transitions incentive program; land trusts; partnerships
Land trusts: Emerging approaches to access & tenure

- Most commonly, land trusts acquire development rights (i.e. an easement)

- Long-term investment in agroforestry more sensible if development is off the table

- Land trusts often also have a conservation mission agroforestry can help fulfill

- Emerging models include:
  - Affirmative agricultural requirements
  - Option to purchase at agricultural value
  - Community Land Trusts acquire land and offer long-term leases

Farm Incubators:
Opportunity to install agroforestry as training infrastructure –
some precedent with orchards

Map from National Incubator Farm Training Initiative
Long-term leases for agroforestry: Means or an end?

Inspirations for Creating a Long-Term Agricultural Lease for Agroforestry: A Workbook

LAST UPDATED: September 29, 2017
FIRST PUBLISHED: June 29, 2016

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# Potential Benefits of a Long-Term Lease in Agroforestry

<table>
<thead>
<tr>
<th>For the Farmer</th>
<th>For the Landowner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gain affordable long-term tenure of land</td>
<td>Receive consistent income</td>
</tr>
<tr>
<td>Build skills and experience</td>
<td>Have a caretaker of the property</td>
</tr>
<tr>
<td>Establish a profitable business</td>
<td>Gain improvements to the property</td>
</tr>
<tr>
<td>Share in innovation of agroforestry practices</td>
<td>Realize increased property value</td>
</tr>
<tr>
<td>Develop a model to be replicated elsewhere</td>
<td>Receive conservation funding</td>
</tr>
<tr>
<td>Create a rewarding and enjoyable livelihood</td>
<td>Option to share in profits</td>
</tr>
<tr>
<td>Attain legacy of revitalizing the land</td>
<td>Attain legacy of revitalizing the land</td>
</tr>
</tbody>
</table>
Sample questions in crafting lease agreement

Reflection

Before diving into the details of the lease terms, it can be helpful to initially reflect upon how the following pieces fit together:

- Who’s paying for the initial input costs of the trees and perennials?
- Is the rent being lowered in any way to account for the value of the trees?
- How do the parties want to allocate the ownership of the trees throughout the lease?
- What approach do the parties want to take for assessing the value of the trees at any given point?
Sample checklist in crafting lease agreement

Checklist at a Glance

- Who are the parties?
- What are the overarching objectives of the parties?
- What is the exact area of land or premises to be leased?
- What is the length term of the lease?
- What is the process for renewing the lease?
- What are the rent arrangement, amount, and payment requirements?
- Is the lease binding on future landowners?
- Can the farmer transfer the lease to another party?
- Can the farmer sublease the land to someone else?
- What happens if the landlord decides to sell the land?
- What are the uses or activities that the farmer is permitted or prohibited from doing?
- Are there standards and land use practices that either of the parties must follow?
- How are improvements handled and accounted for, including the addition of trees?
- Does the landlord retain rights to use the premises?
- Who pays for insurance?
- How is access to water handled?
- Does the farmer-tenant have access to facilities and equipment?
- Who pays for utilities?
- Who pays for taxes?
- Who is responsible for large-scale capital improvements to the land (e.g., access roads, drainage management, perimeter fencing)?
- How are disputes handled if and when they arise?
- Can the lease be terminated early?
- What happens when the lease terminates, whether early or at the end of the term?
- How do the parties ensure ongoing and open communication?
Sample Annotated Long-Term Agroforestry Lease Agreement

This Sample Long-Term Agroforestry Lease Agreement serves to help farmers and landowners through the process of solidifying an effective lease agreement. It includes annotations to help explain legal aspects and significance of key terms and sections. However, this agreement is not comprehensive, nor will it meet the needs of any and all long-term agroforestry ventures. It is not intended to be a template. Do not cut and paste, in whole or in part! Again, the best lease agreements will be those crafted by parties who walk through the Checklist and refer to the sample as a guide, carefully noting the specifics for how they want to address a particular situation or issue.

Sample Long-Term Lease Agreement

This lease ("this Lease" or "the Lease") is effective as of April 1, 2016.

The parties to this Lease (collectively, "the Parties" or singularly, "the Party") are as follows:

Lisa Landowner
123 Country Land Rd.
River City, Sun State 12345
Hereafter referred to as the "Lessor,"
and
Phil Farmer-Tenant
321 Agroforestry St.
Tree City, Sun State 12344
Hereafter referred to as the "Lessees."
An example:
Agroforestry with 30-year lease agreement

Saturn Farm
21 acres - Ogden, IL
Example: Saturn Farm

Commercial chestnut, hazelnut, and currant

- 21 acres
- 7-acre CRP Windbreak
- 3.5-acre CRP Pollinator
- Absentee land owner
- Beginning farmer + investor
- 30-year cash rent lease
- Fixed formula for liquidated damages to Lessee if lease is terminated early
- Lessee has first-right-of-refusal to purchase land
Lessee purchases, manages, harvests, and profits from perennial crops

Lessee pays for CRP and receives payment

Example: Saturn Farm
AGROFORESTRY LAND ACCESS

FREE Agroforestry Long-Term Lease Workbook
This Workbook is for farmers and landowners who have a long-term vision for a piece of land and are willing to collaborate and commit to a lasting arrangement to make such a vision a reality. It offers an overview of legal considerations for long-term leases that address key particularities of agroforestry. Agroforestry is a suite of practices and tools that involves intentionally integrating trees and shrubs into traditional crop and animal farming systems. While much of this Workbook is framed in the context of agroforestry, many of the issues raised are relevant for farmers and landowners who aspire to enter a long-term lease for annual crop or livestock farming.

VULCAN FARM (Sidney, IL) utilizes a 99-year agroforestry lease. Landowner grazes sheep in silvopasture, while lessee grow a variety of tree crops.

Other Educational Resources
GETTING STARTED
Finding, Assessing, and Securing Farmland: Plain-language guide from New Entry Sustainable Farming Project, Tufts University Document for farmers looking for land. Some questions this guide will help answer:
- What kind of land am I looking for?
- What sort of land tenure situation is right for me?
Opportunities:
- 400,000,000 acres changing hands this decade
- Many non-operator landowners desire alternatives to row crops
- Operator landowners may lease land to integrated enterprises
- Growing demand for local and healthy farm products

Needs:
- Farmer development & support
- Landowner/investor education & engagement
- Intermediaries to broker & backstop multi-party agreements
- Diversified revenue, risk mitigation, & equity models

Thank you!
Questions?
Comments?
Scathing rebuttals?
keefe@savannainstitute.org

Those who are inspired by a model other than Nature, a mistress above all masters, are laboring in vain.
- Leonardo da Vinci