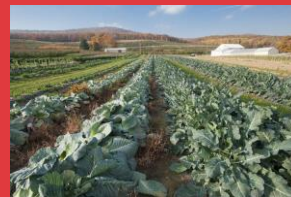




UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
EMPOWERING THE STATE

Advancing Soil Health Through Agricultural Conservation Easements and Referenced Plans

Sarah Everhart
Agriculture Law
Education Initiative
Maryland Carey Law



September 9, 2021

Agriculture Law Education Initiative



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
MPOWERING THE STATE

The Agriculture Law Education Initiative (ALEI) is a partnership of the Francis King Carey School of Law at the University of Maryland, Baltimore (UMB); the College of Agriculture & Natural Resources at the University of Maryland (UMCP); and the School of Agriculture and Natural Sciences at the University of Maryland Eastern Shore (UMES). ALEI is an initiative of the University of Maryland: *MPowering the State*, a strategic alliance between UMB and UMCP created in 2012 to significantly expand research collaboration, business development, and student opportunities at both universities.

Website: www.umaglaw.org

Twitter: @MdAgLaw

Facebook: www.facebook.com/MdAgLaw

Email: umaglaw@umd.edu



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
MPOWERING THE STATE

2021 Agricultural and Environmental Law Conference



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

Wednesday Nov. 17th PM & Thursday Nov. 18th AM

Attend ONLINE

- \$35 / Students Free
- **Topics include:**
 - Using Legal Education to Increase Equitable Participation in NRCS Conservation Programs
 - Growing Carbon Credits: Should Maryland Farmers Open a Carbon Banking Account?
 - Legislative Strategies for Reaching Ag Sector 2025 Chesapeake Bay Clean-up Goals

To register visit:

go.umd.edu/umlawconfreg21



Conservation Practices on Leased Farmland



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

- Approximately 40% of farmland both nationwide and in Maryland is leased.
- Conservation practices are less prevalent on leased acres.
- Why?
 - Communication
 - Leasing uncertainty
 - Knowledge deficit

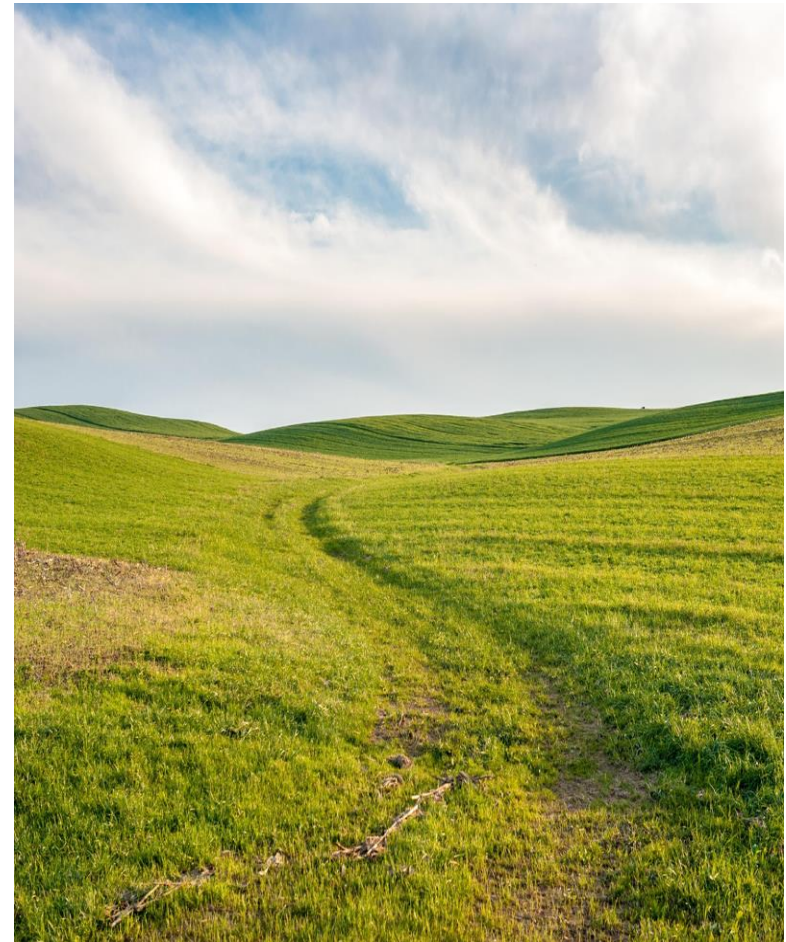


Photo credits for this presentation Edwin Remsberg

Leasing as a Tool



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE



EXTENSION BULLETIN

SEPT. 2018 | EB-434



Agricultural Conservation Leasing Guide

This work is supported by the National Institute of Food and Agriculture, U.S. Department of Agriculture, through the Northeast Sustainable Agriculture Research and Education program under subaward number ENE18-151.

-Who- the roles of the state and federal players and contact info(UME, NRCS, SCD, NGOs)

-What- leasing and communication strategies for each party to consider

-How- sample lease language to support specific practices

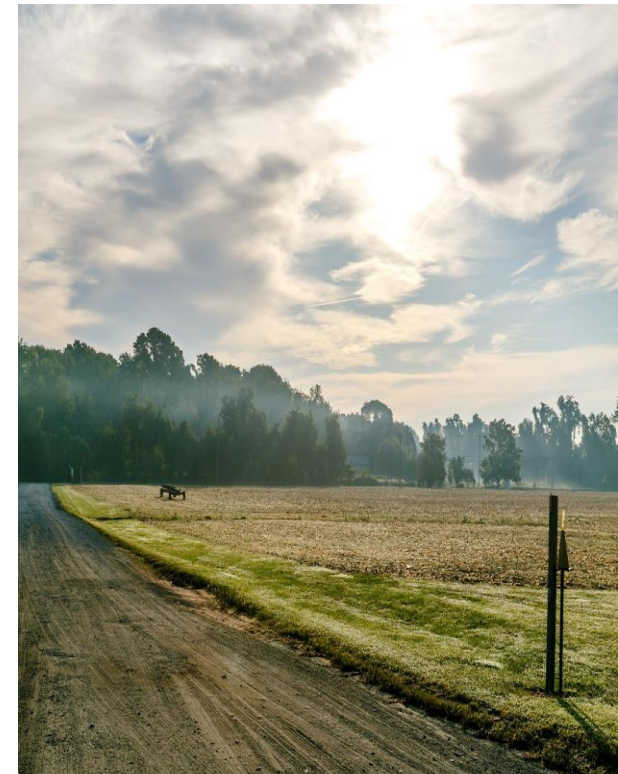
go.umd.edu/conservationleasing

Structuring a Lease to Support Conservation



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
MPOWERING THE STATE

- Communicate to assess goals and reach consensus
- Consider the lease term
- Set farming standards
- Address specific practices
- Consider the costs and compensation
- Agree to review and revise



Kick starting Communication



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
MPOWERING THE STATE

- To the Landowner: What are your future plans for the farm?
- To the Farmer: Are there characteristics of the farm that could be improved?
- See Appx. B of Ag Conservation Leasing Guide.



Length of Lease



- Short leases discourage conservation practices
 - Farmers are not guaranteed a long-term interest in the leased land
 - Conservation practices often take time to create yield results
 - A year-to-year lease doesn't give farmer assurance that he/she will benefit from the practices

Set Standards



-Tenant shall follow the farming best practices of the State Department of Agriculture and the _____ County Soil Conservation District.

-Tenant shall, to the maximum extent possible, implement the best management practices and natural resource strategies outlined in the farm's soil conservation and water quality plan dated _____ and as amended from time to time.

Address Specific Practices



- Example: Conservation Tillage
- Explain and define the practice
- Considerations
 - Does the farmer have the necessary equipment?
 - Would starting as reduced-till while phasing to no-till be beneficial?
 - What are the disease and weed management challenges and implications in a reduced-till and no-till system?

Conservation Tillage



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

Tenant, in consultation with SCD, NRCS, and/or the State Department of Agriculture, shall reduce tillage as much as possible in accordance with the farm soil conservation and water quality plan.

Tenant shall maintain at least [insert percentage such as 30] % residue cover on the ground surface at planting.



Consider the Costs

- Possible costs include
 - Initial implementation/construction
 - Yield/Profit losses
 - Maintenance
- Consider addressing costs in the lease
 - Rent can be discounted
 - Program payments can be shared
 - Non-monetary benefits (ex. longer lease term)
- Don't forget about the tax implications!

Compensation Options



Sample lease provision: To compensate Tenant for the time and expenses contributed towards the creation of a _____, rent in year one of the lease shall be reduced by \$_____ or %_____.

Alternative: The rent for the first year of the term will be reduced by 15% and the reduction shall diminish by 5% each year until the full rental amount is due and owing.

Troubleshooting



- Right to inspect and take soil samples?
- Share Nutrient Management Plan?
- Agree to meet annually to verify practices
 - Revise as needed!



Thanks



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

I am happy to take questions.



Sarah Everhart

severhart@law.umaryland.edu / 410-458-2475