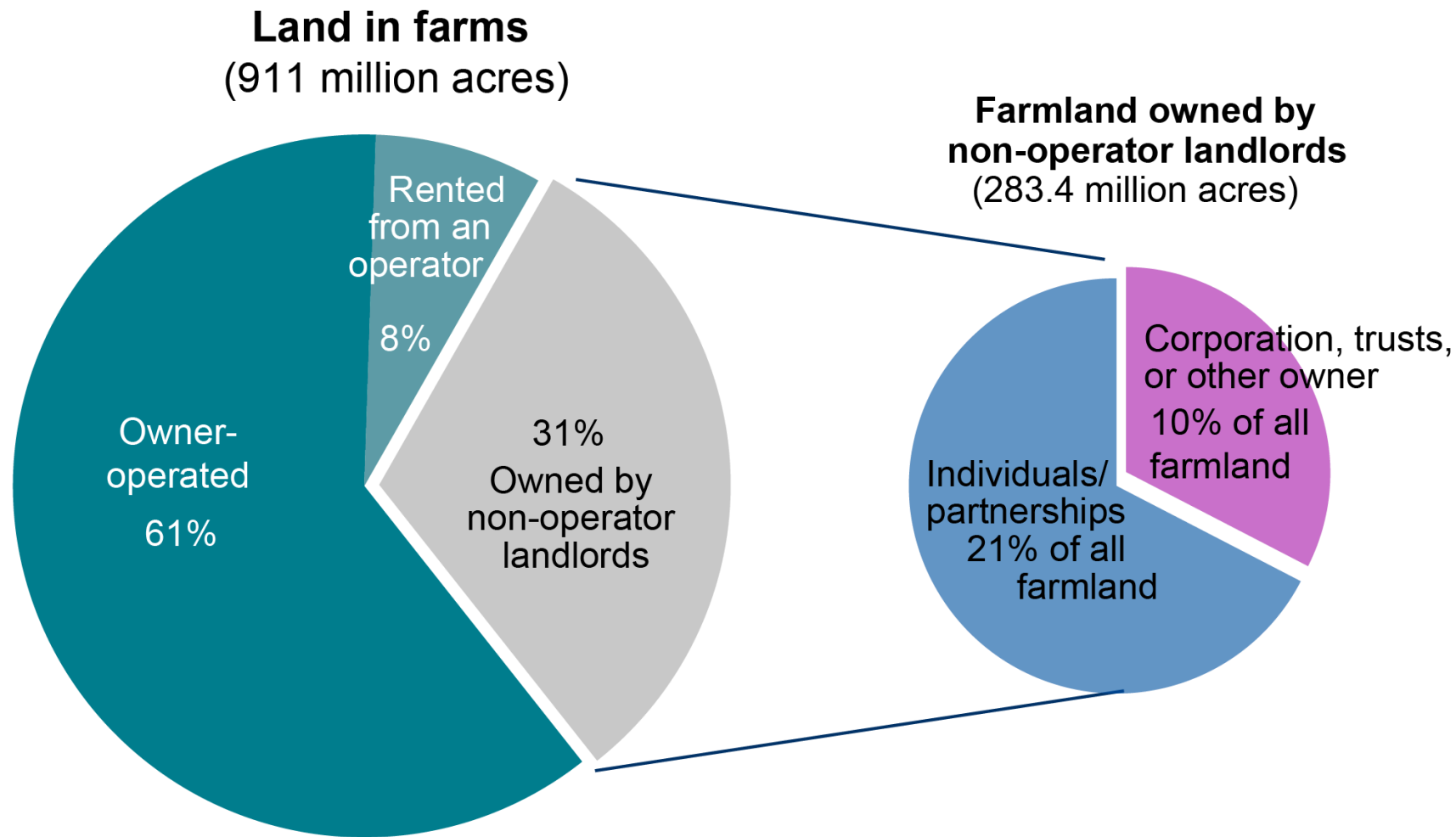


Perennial Tenure: Secure land access for agroforestry

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

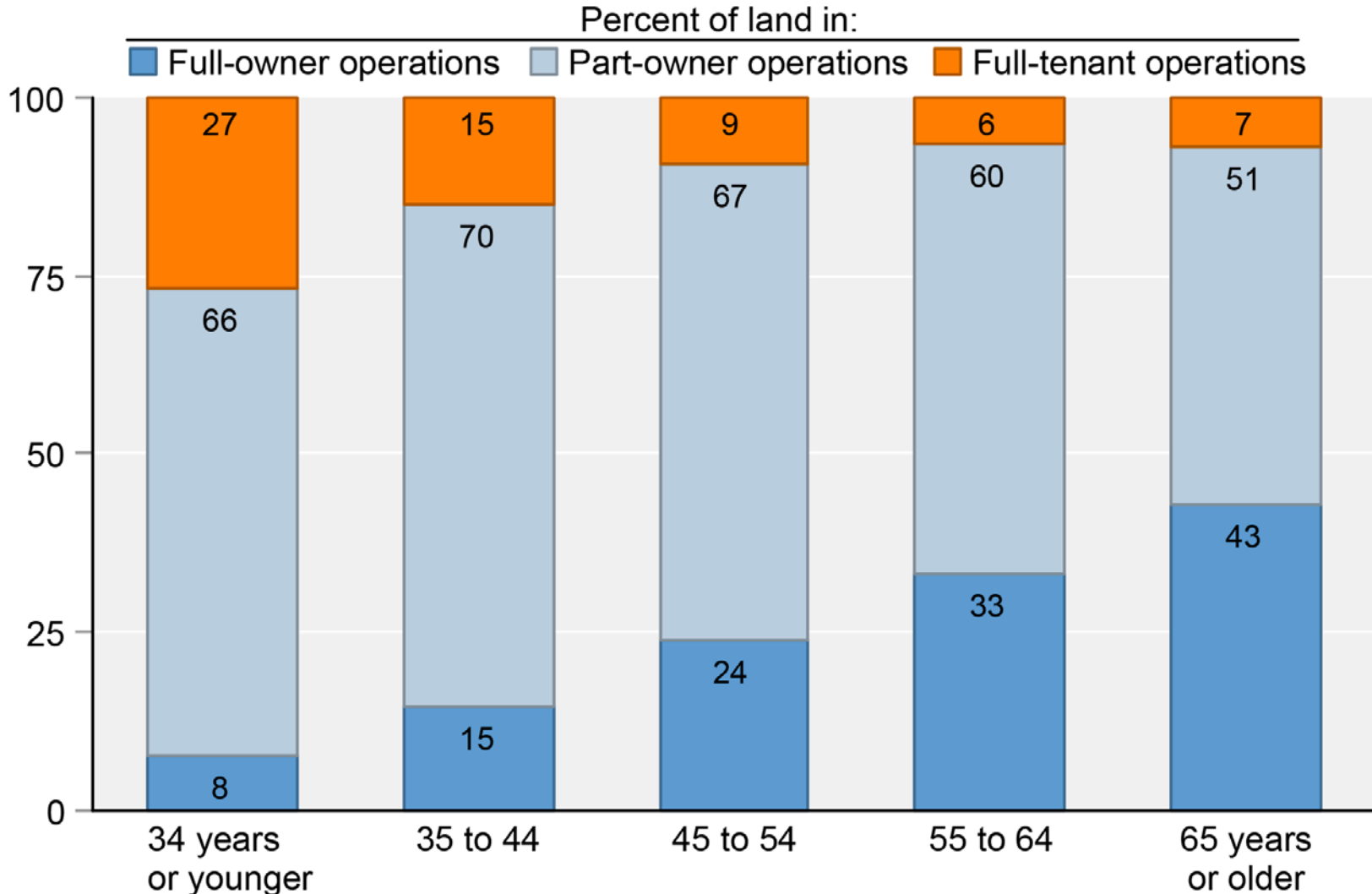


Note: Data exclude Alaska and Hawaii.

Source: USDA, Economic Research Service and National Agricultural Statistics Service, 2014 Tenure, Ownership, and Transition of Agricultural Land (TOTAL) survey.

Why it matters:

Beginning farmers especially rely on leased land



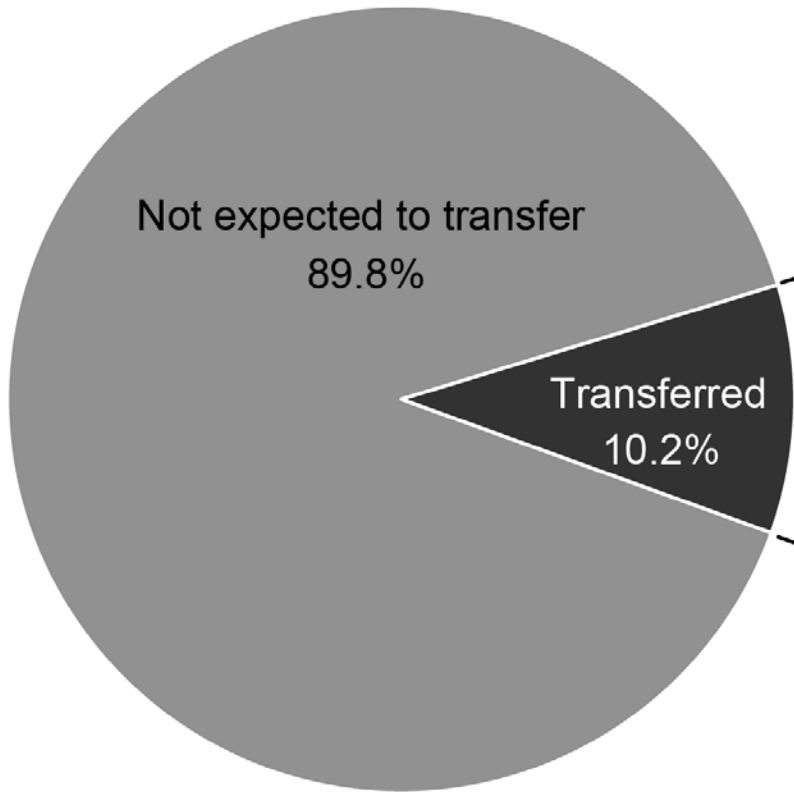
Note: Data exclude Alaska and Hawaii.

Source: USDA, Economic Research Service and National Agricultural Statistics Service, 2014 Tenure, Ownership, and Transition of Agricultural Land (TOTAL) survey.

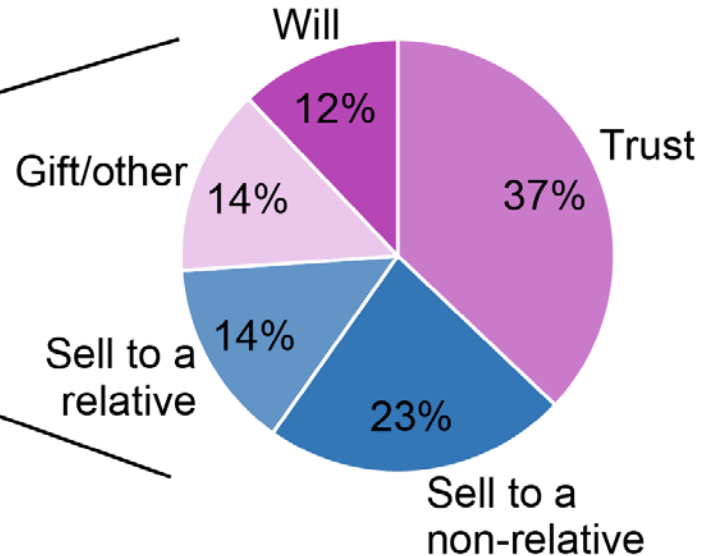
Why it matters:

10% of farmland expected to transfer in next 4 years

Land in farms (911 million acres)



Transferred land by expected method (93 million acres)



Note: Data exclude Alaska and Hawaii.

Source: USDA, Economic Research Service and National Agricultural Statistics Service, 2014 Tenure, Ownership, and Transition of Agricultural Land (TOTAL) survey.

Land access & tenure:
Simplified

Access:

Acquire →

Lease →

Tenure:

Ownership

Tenancy





Land access & tenure

Complicated



WHAT IS MY GOAL FOR ACCESSING MY FARMLAND?

I want to own a farm now
(OWNERSHIP)

I want to own a farm in the future
(PATH TO OWNERSHIP)

I want to rent a farm
(TENANCY)

WHICH ARRANGEMENTS MIGHT WORK FOR ME?

Sole Ownership	Whole Shared Ownership Interests	Partial Ownership Interests	Path-to-Ownership Options	No Interests (Rights) in Land	Leasehold Interest in Land
<p>Farmer acquires title to land; known as Fee Simple</p> <ul style="list-style-type: none"> ▶ Outright Cash Purchase ▶ Financed purchase with conventional or alternative financing ▶ Seller-financed ▶ Gift from a family member or other ▶ Inheritance from a family member or other 	<p>A group of farmers, or farmers with non-farmers, forms a legal entity to own the farmland. Farmers run individual or joint operations on land rented from the entity</p> <ul style="list-style-type: none"> ▶ Cooperative ▶ LLC ▶ Corporation 	<p>Farmer and other entities own different interests or rights in the land</p> <ul style="list-style-type: none"> ▶ Ground lease where entity owns land; farmer owns structures and rents land ▶ Life estate where non-farmer retains rights to occupy ▶ Easement where entity holds: <ul style="list-style-type: none"> ▶ Development rights ▶ Other easement 	<p>Farmer purchases a specific farm over time</p> <ul style="list-style-type: none"> ▶ Lease-to-own with right of first refusal or purchase option ▶ Land contract (aka installment sale) where farmer pays landowner toward purchase ▶ LLC, coop or corporation within which equity in the land is gradually transferred to the farmer ▶ Gift of land over time 	<p>Farmer has agreement granting permission to use the land (technically not a tenant)</p> <ul style="list-style-type: none"> ▶ License ▶ Permit ▶ Memorandum of Agreement 	<p>Farmer (tenant) has a contractual agreement assigning use rights and responsibilities; may be written or oral</p> <ul style="list-style-type: none"> ▶ Short-term lease ▶ Long-term lease ▶ Ground Lease where entity owns land; farmer owns structures and rents land

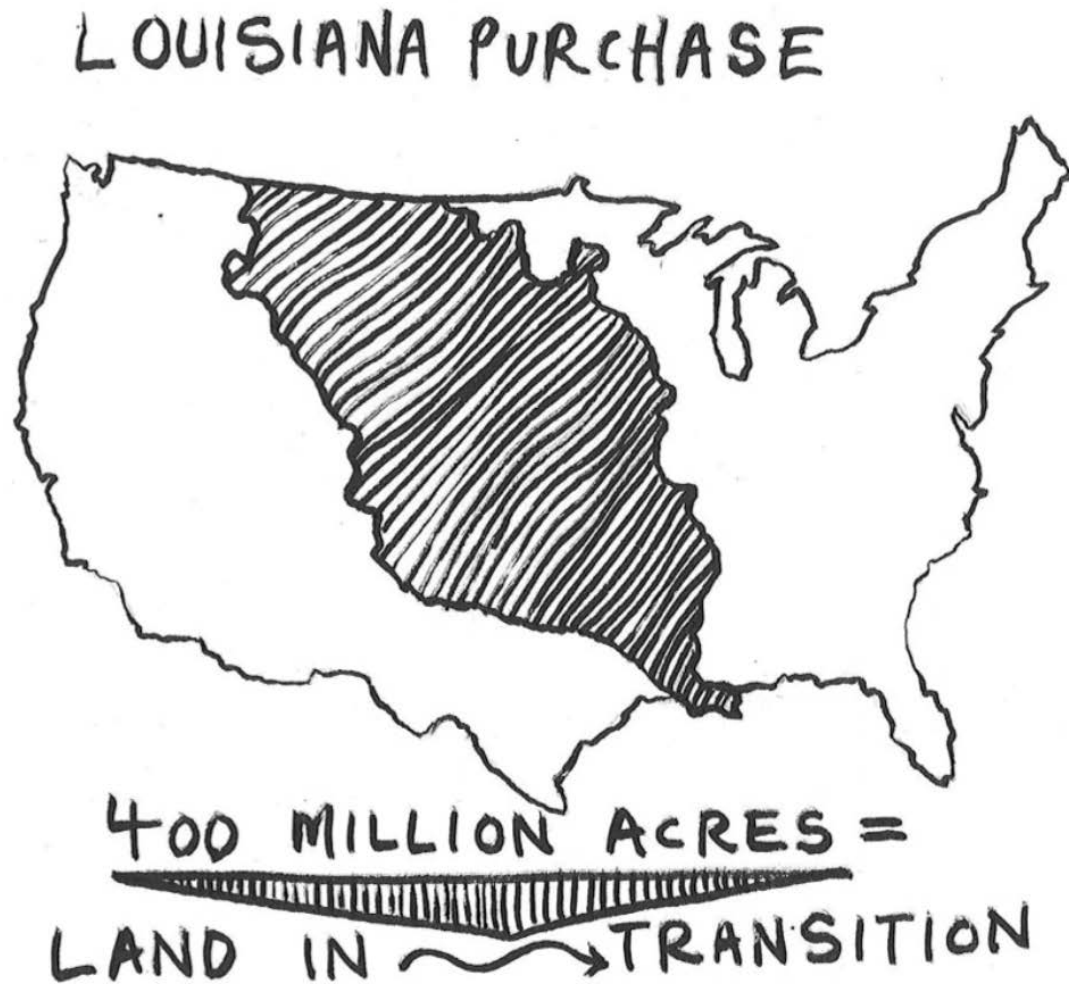
WHO MIGHT BE INVOLVED?

<ul style="list-style-type: none"> ▶ Private bank ▶ State/Federal lender ▶ Seller-financer ▶ Community/Alternative lender ▶ Family/trust ▶ Employer ▶ Other private landowner 	<ul style="list-style-type: none"> ▶ Other farmers ▶ Community members ▶ Investors ▶ Family members 	<ul style="list-style-type: none"> ▶ Community land trust ▶ Conservation land trust ▶ Other Non-profit ▶ Public agency ▶ Private party ▶ Investors 	<ul style="list-style-type: none"> ▶ Private landowner ▶ Family ▶ Non-profit ▶ Government entity ▶ Investors 	<ul style="list-style-type: none"> ▶ Private landowner(s) (individual, family or group) ▶ Public/Gov't entity ▶ Non-profit ▶ Other landholding entity 	<ul style="list-style-type: none"> ▶ Private landowner(s) (individual, family or group) ▶ Public/Gov't entity ▶ Non-profit (e.g., land trust, school) ▶ Investors ▶ Retired farmer
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Farmland transfer:

An inescapable opportunity

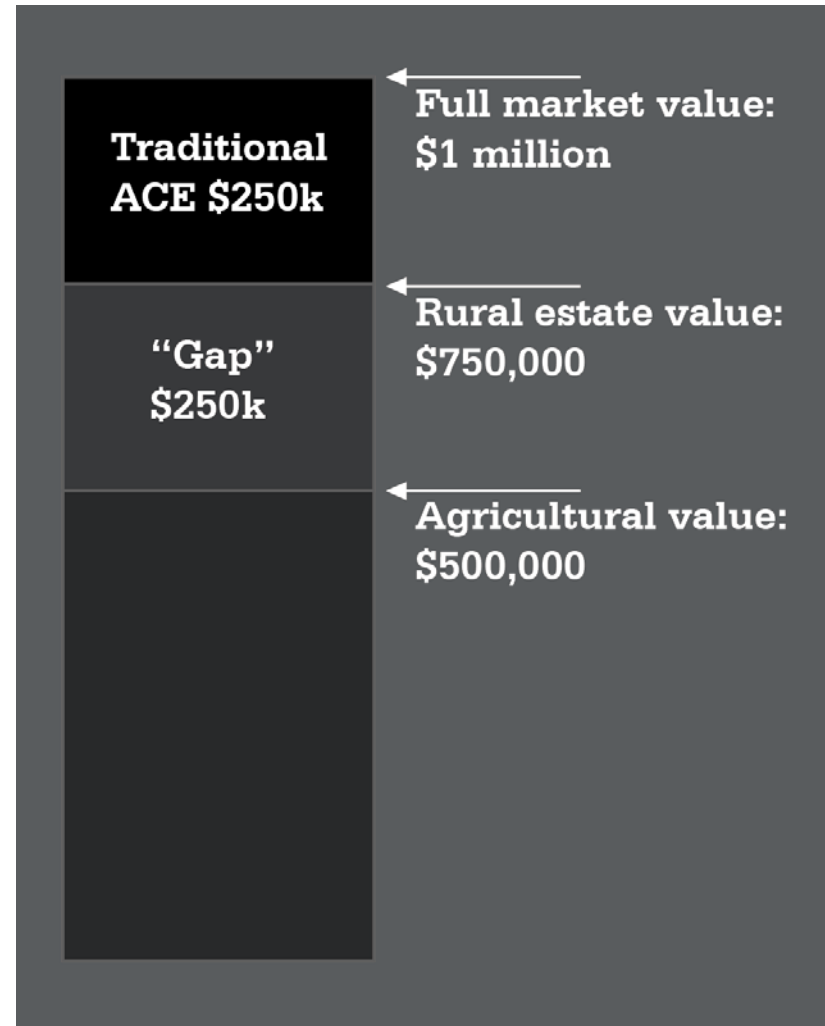
- ~40 % of U.S. agricultural land is likely to transfer in next 20 years
- Succession planning improves conditions for long term investments
- Transfer is window for support: e.g. transitions incentive program; land trusts; partnerships



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



Modified from Johnson, Kendra. "Conserving Farmland in California: For What and For Whom? How Agricultural Conservation Easements Can Keep Farmland Farmed." In Sustainable Development Law and Policy, Volume IX, Issue 1.

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

This work was supported by the [USDA National Agroforestry Center](#), a partnership of the U.S. Forest Service and the Natural Resources Conservation Service (<https://nac.unl.edu>). Any opinions, findings, conclusions or recommendations expressed within do not necessarily reflect the view of USDA, NAC, UFS or NRC.



Potential Benefits of a Long-Term Lease in Agroforestry

For the Farmer	For the Landowner
Gain affordable long-term tenure of land	Receive consistent income
Build skills and experience	Have a caretaker of the property
Establish a profitable business	Gain improvements to the property
Share in innovation of agroforestry practices	Realize increased property value
Develop a model to be replicated elsewhere	Receive conservation funding
Create a rewarding and enjoyable livelihood	Option to share in profits
Attain legacy of revitalizing the land	Attain legacy of revitalizing the land

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 landowner 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 landowner 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 lease agreement template

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 State¹ 12345

Hereafter referred to as the "Lessor,"

and

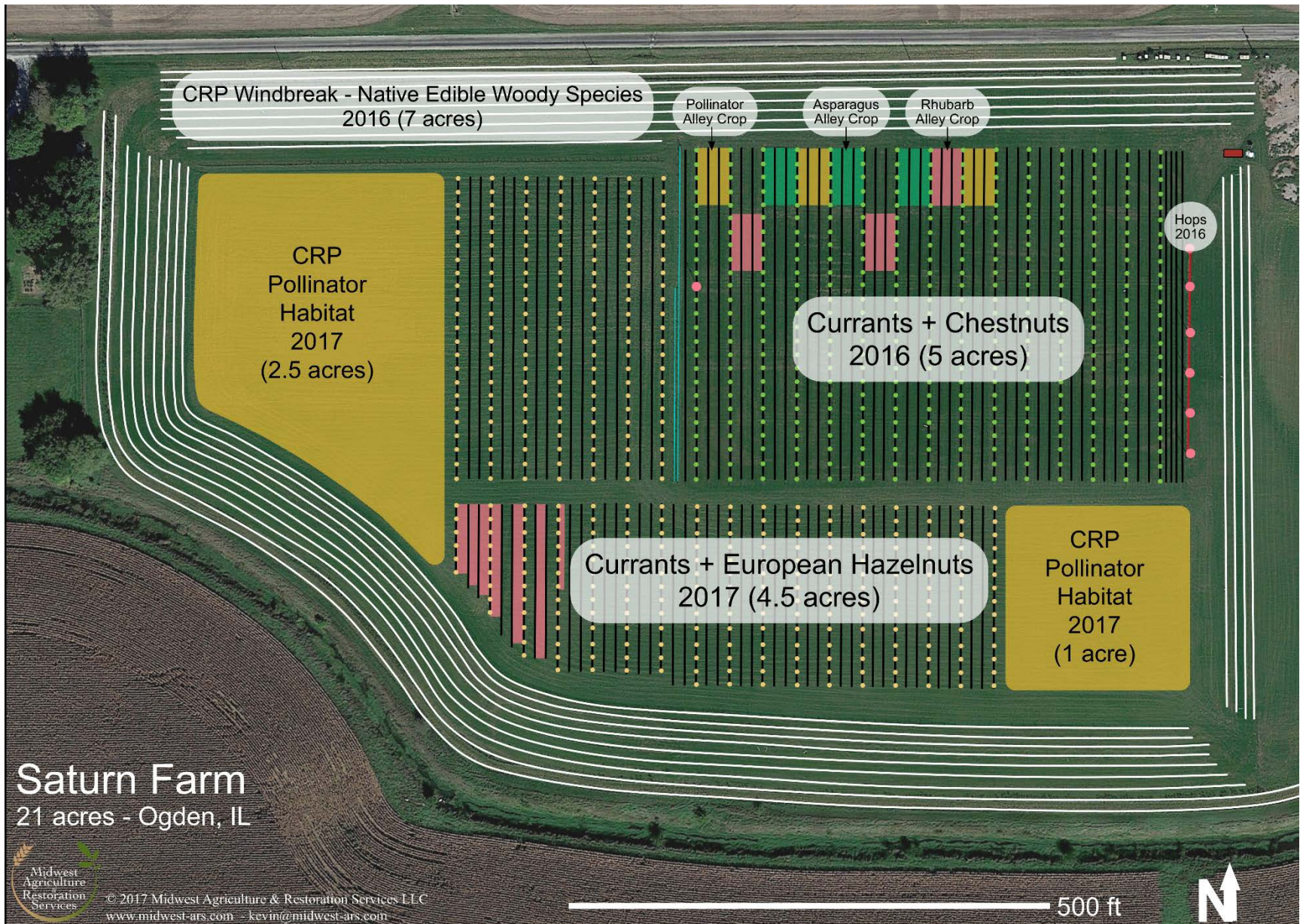
Phil Farmer-Tenant

321 Agroforestry St.

Tree City, Sun State 12344

Hereafter referred to as the "Lessee."

An example: Agroforestry with 30-year lease agreement





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

Example: Saturn Farm



Lessee pays for CRP and receives payment



Lessee purchases, manages, harvests, and profits from perennial crops



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?



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LAST UPDATED: June 25, 2016 FIRST PUBLISHED: June 25, 2016

By: Erin Hannum

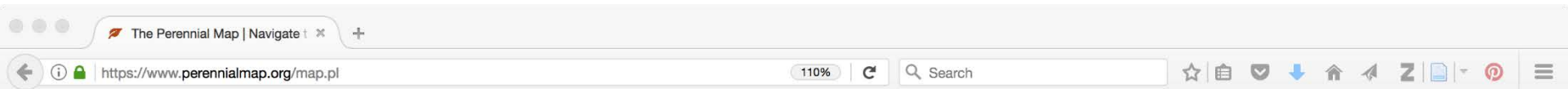
Research Attorney, Farm Commons
erin@farmcommons.org

www.farmcommons.org

DISCLAIMER: This guide does not provide legal advice or establish an attorney-client relationship between the reader and author. Always consult an attorney regarding your specific situation.

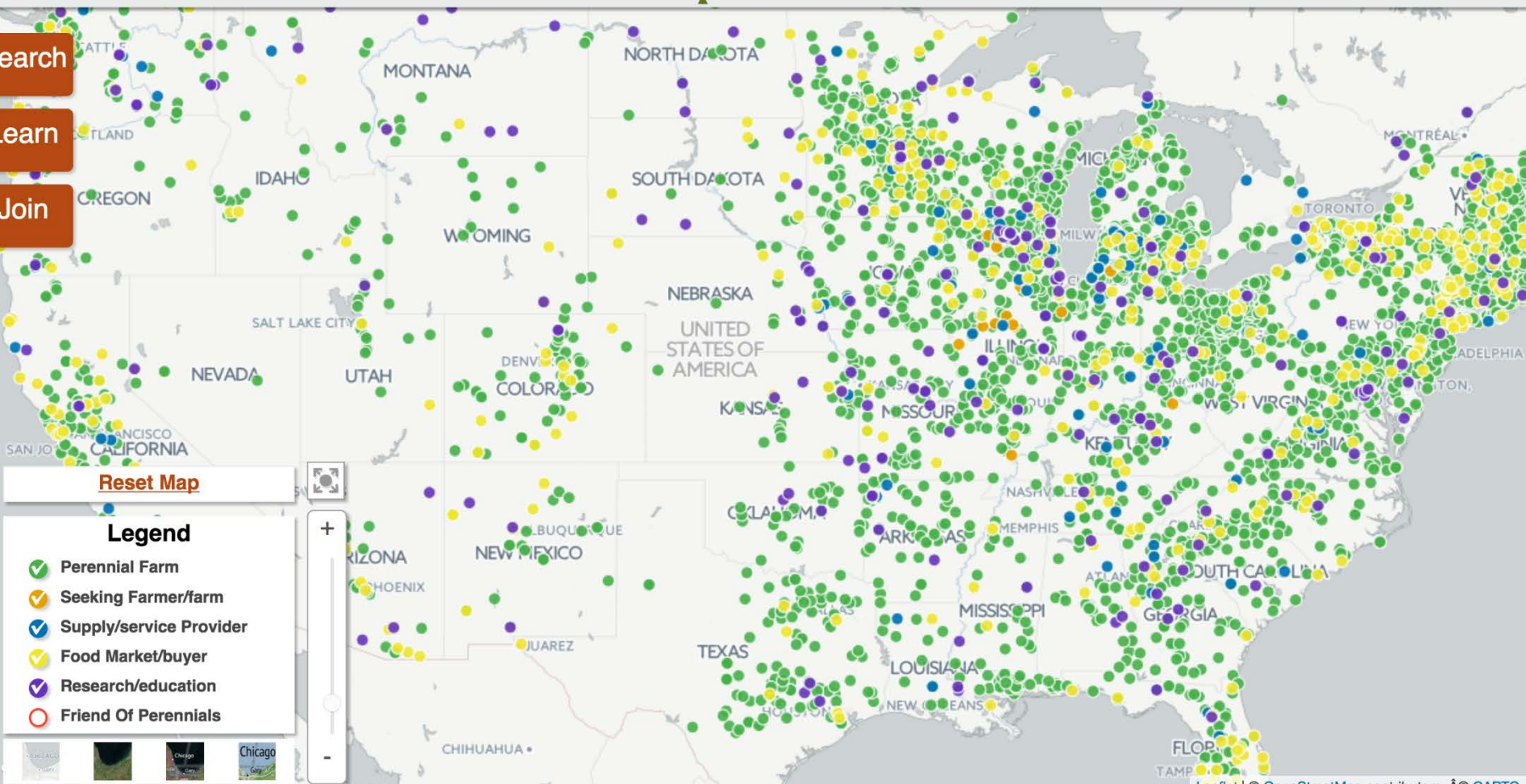
PERENNIALMAP.ORG

NAVIGATE THE FUTURE
OF FARMING.



PERENNIALMAP.ORG

- Search
- Learn
- Join



Reset Map

Legend

- Perennial Farm
- Seeking Farmer/farm
- Supply/service Provider
- Food Market/buyer
- Research/education
- Friend Of Perennials

Chicago

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