

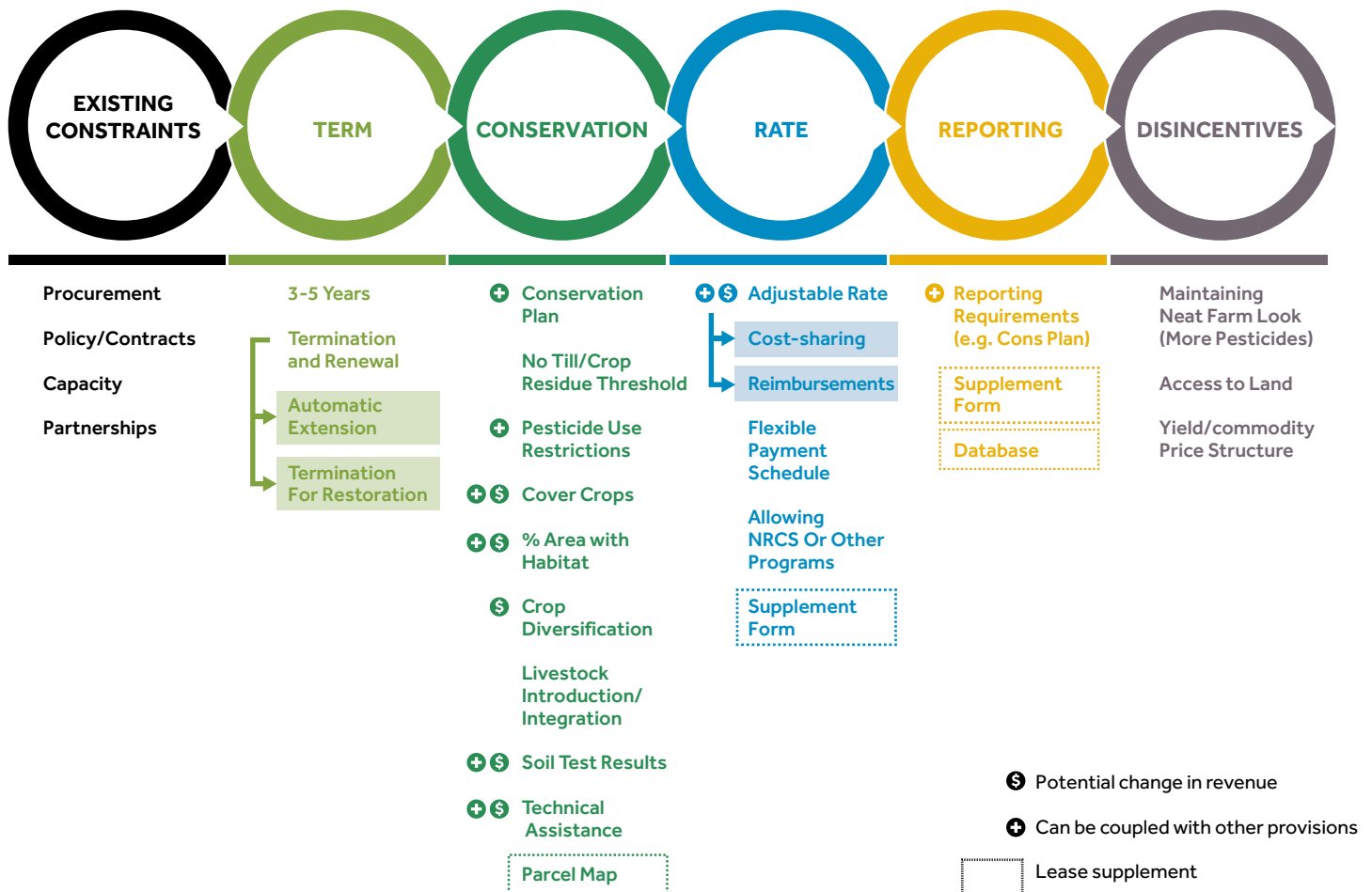


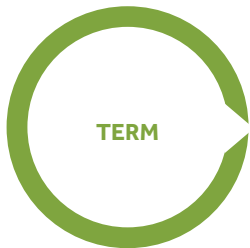
CONSERVATION LEASE

As a binding contract, the lease agreement is the key instrument that land managers and owners can use to ensure that their land is managed in a certain way. Prior to drafting a lease agreement or considering changes to the lease, consider what barriers might exist in the current governance structure that could prevent implementation of desired conservation focused provisions in the lease.

There is a spectrum of options available to build a lease that incorporates conservation and regenerative agriculture principles (11, 12). Organizations can tailor their approach by selecting provisions that fit best within their current situation. The diagram below provides an overview of conservation provisions, while the following sections outline relevant considerations for each category and how they can be coupled with each other to achieve maximum impact.

FRAMEWORK: CONSERVATION LEASE





LEASE TERM

Increasing the lease term creates an incentive to implement more conservation because it enhances tenure security. As such, the tenant has an opportunity to engage in

long-term planning and is on the land long enough to see the benefits of investing into on-farm practices. Conditions under which leases are renewed and terminated are also important because they can set the tone for establishing good working relationships with tenants and reduce transaction costs for the organization. For natural resource agencies that ultimately want to restore farmland to natural habitat, being upfront about plans and the timeline to terminate a lease ensures transparency in the process while addressing the organizations' needs.

To incentivize regenerative agriculture through the lease term, ensure that farmland policy doesn't set a cap term at a low number. If such cap exists, amend procurement rules or policies to increase or remove the cap. To streamline the lease renewal, explore and integrate provisions that allow for automatic renewals.

Term length of 3-5 years

Pros: Allows time for implementation of practices, increases tenant security, and reduces transaction costs.

Cons: Perceived reduction in flexibility to renegotiate rental rates.

A clause requiring annual approval and extension by the governing body can be used to provide regular oversight and engagement opportunity with tenants; term length can be variable from site to site and determined based on site management plans.

Streamlined renewal and expectation for termination

Pros: Further reduces transaction costs, builds trust with tenants.

Cons: Property transitioning to non-agricultural land use, untested tenant.

Termination provisions can be coupled with conservation provisions relevant to site needs and prospect of potential land use changes to ensure that termination is not unexpected. Furthermore, early termination for non-compliance should be included in the lease. Examples for streamlined renewals include: automatic extension without notice to terminate; option for adjusting rental rate in lease extensions based on a provided index (+ provision for indexing rate); right of first refusal when term is set to expire; lease term structure is 3+1+1 years rather than 5 years up front.

The next set of provisions to consider are related to implementation of specific conservation measures as part of the lease agreement.



CONSERVATION

In addition to creating a lease that encourages conservation practices, the lease can include provisions that require specific conservation practices to address particular resource

concerns or establish a baseline level of conservation on the land. Some practices may require special skills or equipment to implement, and could be coupled with technical assistance and/or alternative rate setting mechanisms to ensure an equitable and sustainable lease. Below are various approaches that incorporate conservation practice provisions into the lease.

Require tenant to develop and submit management plans, such as conservation, pest management, nutrient management plans

Pros: No-to-low additional cost to implement; plans may be required for other cost-sharing conservation programs; an opportunity to work with local Soil and Water Conservation Districts, Natural Resource Conservation Service staff, or university extension offices.

Cons: Though planning is important and provides a foundation for action, having a plan does not guarantee that it will be implemented, additional administrative burden.

Ideally the required plans are developed according to an existing standard (e.g. NRCS) to ensure consistency and quality.

Require no till and/or crop residue thresholds

Pros: No-to-low additional cost, fundamental to reducing erosion and improving soil health.

Cons: Depending on how conservation tillage is defined, it may be challenging to verify; may require new equipment or adjustments to cropping system and additional technical support.

The tenant might need additional resources to switch to a no-till system if they haven't done no-till before. If there is additional cost of implementation, it can be subtracted from base rental rate. An alternative or additional way to verify ground cover is to measure % residue.

Restrict pesticide use

Pros: Opportunity to strengthen pest management provisions and couple them with a pest management plan.

Cons: The administrative burden associated with increased data management and verification.

In addition to restricting use of particular pesticides, the organization can provide guidelines regarding and/or require best practices aimed at limiting herbicide use overall.

Implement cover crops

Pros: Keeping the ground covered is one of the fundamental principles of soil health and helps to reduce erosion; cover crops are becoming more widely accepted as a part of a cropping rotation, thus enabling wider adoption.

Cons: There is a fairly low adoption due to lack of information about benefits, delayed benefits and increased upfront costs (~\$20-30/acre).

To incentivize use of cover crops, such conservation provision can be coupled with an adjustable rate, for example, a discount for acres where cover crops are planted. More examples of how to couple conservation and adjustable rates are provided on the following pages.



Implement habitat, diversification, and/or livestock integration

Pros: Introducing requirements related to habitat and integration aligns with agencies' mission while diversification and livestock are tenets of regenerative agricultural system and improve soil health and environmental outcomes. Some agencies are piloting and implementing some of these practices already.

Cons: This is a newer approach that is more complex and resource intensive with potential pushback from the community (e.g. livestock operations in suburban areas). The agency can see a reduction in revenue due to taking land out of production associated with habitat practices.

To incentivize these types of practices, flexible rates can be used to lower rents.

Conduct soil testing

Pros: Relevant data is critical in informing management decisions and tracking progress. Advances in technology allow for data about biological soil properties that in turn inform management decisions. Soil test results and discussion of recommendations can be used as an engagement opportunity with the tenants. In addition, if the agency takes on the expense, it will then have control over data consistency and acquisition while sharing the benefit with farmers.

Cons: There is a cost to the responsible party, as well as an administrative cost to process and analyze data.

Soil testing is long-term investment with a learning curve and results should be provided as part of negotiations/bids to farmers to enhance transparency.

Soil data should also be linked to reporting provisions, if appropriate, to ensure that soil measurements are integrated into overall data tracking for the farmland. Without follow up, simply conducting soil testing does not guarantee implementation of conservation. In addition, without an effort to change management practices and associated changes in soil characteristics, investing in more expensive tests that measure soil biological properties is not worth the investment.

Provide technical assistance to tenants

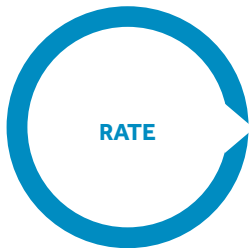
Pros: Providing support for implementing new conservation practices is critical to farmers' success and offering technical assistance can leverage partnerships with NRCS, SWCDs, or other agronomic organizations in the area.

Cons: Developing an effective program that provides needed assistance requires staff time and resources.

To incentivize participation in training or obtaining appropriate certifications, flexible rates can be used to lower base rate for tenants. Technical assistance programs can be internal or external or could be provided by a cooperative structure.

Lease supplements

Maps, practice specifications, and other supporting information (e.g. soil type) about the parcel should be provided by the agency to the tenants to increase transparency and solicit competitive bids.



RENTAL RATE

How the rental rate is set and the actual amount are important considerations in the lease negotiation process. If the goal is to promote sustainability and conservation, the rate

should allow for adjustments based on investments made by the tenant, especially if the tenant is unlikely to observe the benefits from the investment before the termination of the lease. Offering more flexibility through the lease payment structure can aid tenants transitioning to sustainable practices in managing their risk, as expenses and yield could be impacted in this period of transition.

Below are various provisions that incorporate adjustable payment structures into the lease.

Adjustable rate

Pros: Base rate can be based on the market prices, reducing complexity and eliminating power imbalance; bids remain competitive w/strong incentive to implement practices; many ways to structure adjustments through reimbursements or cost-share.

Cons: Detailed information about parcels and practices is needed to determine appropriate discounts. The agency might see a reduction in revenue.

Implemented practices, associated costs, and responsible parties for those costs need to be clearly articulated in the lease agreement.

There are three ways to think about adjustable rates - via a cost-sharing, reimbursement, or revenue-sharing approaches.

Cost-sharing approach

Reduction per practice: Reducing rate for improvements, for example, the rent for cropland acres planted with cover crops shall be reduced by 10%. The rent for land taken out of production for field borders, filter strips or grass waterways will be reduced by 20%.

Graduated rent: Allows for rent to be reduced by a certain percentage in first year, and brought up year by year to the normal rate. This method works best with a 3+ year lease. Good for transitioning or beginner farmers.

Implement and maintain: Agency pays for the installation or equipment needed, while tenant is responsible for maintenance of the practice.

Reimbursement approach

Implementation cost: Rent is the difference between market rental rate and implementation cost for conservation measures according to the budget submitted by the prospective tenant. A lease supplement might be helpful to capture expenses and specs for improvements.

Reimbursement: Agency reimburses tenant based on actual cost of implementation of the practice (not ideal since the capital is often needed up front to invest)

Revenue-sharing approach

Rate is based on share of gross revenue (25%-40%) – need to have and share detailed numbers



on production costs; focuses on yield rather than conservation; reinforces conventional cropping systems with few rotations. Not recommended for conservation leases.

Additional provisions and supplements can be utilized to provide additional flexibility for the lease rate adjustments and efficiency in their implementation.

Flexible payment schedule

Pros: Allowing tenants to make smaller payments early on and increase payment amount over time can provide tenants more capital to invest if they aren't able to invest all the capital up front.

Cons: More payments or different types of payments can increase the transactional costs for the agency and make it more difficult to budget.

Participation in conservation assistance programs

Pros: Additional resources (e.g. NRCS cost sharing) can be leveraged to implement practices, for both tenants

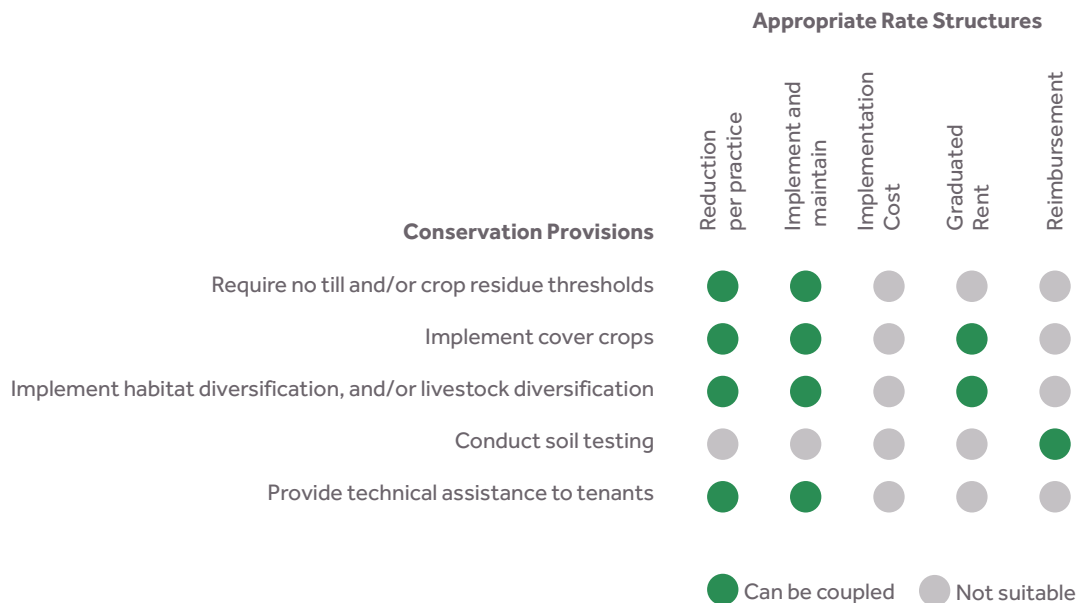
and the agency.

Some funds can only be distributed directly to the farmers and they must be willing to go through application process.

Lease supplements

Reimbursement lease supplement can be used to specify improvements and expenses associated with implementation of conservation practices.

The figure below highlights most suitable ways to combine conservation provisions with various adjustable rate structures. For example, technical assistance (workshop or field day) that helps implement conservation practices can be reflected in the rate via a set lease rate reduction or the agency providing resources (i.e. implementing) for the training.





REPORTING

Data about management activities and outcomes is key in assessing progress, which can in turn build more support for the farmland leasing program and more resources

allocated to its implementation. As data is gathered and analyzed, agencies can make informed decisions about the program and continue to refine it to achieve conservation outcomes.

Reporting provisions

Pro: Provides data for increased transparency and evaluation of the program. The data about management establishes the basis for discussion and improving relationships with tenants.

Cons: Collecting and analyzing the data creates an additional administrative cost.

This provision should be coupled with conservation provisions that require documentation (e.g. conservation plan submission, pesticide/nutrient application) to make verification more efficient. If the agency is developing a data tracking system, reporting provisions in the lease can be an efficient mechanism to ensure that needed data is provided to the agency.

Lease supplements

A standard form to gather data from tenants can be used to ensure consistent reporting and intake of the relevant data.



DISINCENTIVES

Some provisions have the potential to disincentivize conservation. When reviewing and amending the lease to encourage and/or require particular practices, it is

important to identify and change provisions that may inadvertently create barriers to conservation.

A 'good neighbor' provision

These are aimed at maintaining a neat farm look and managing noxious weeds. Provisions like these can incentive the overuse of pesticides. This can be addressed by either removing the provision or strengthening the pesticide/ herbicide restrictions.

Access to land

As part of their duties, public agencies often reserve access to leased farmland during certain parts of the year. Restricting farmer access can prevent certain on farm conservation practices (ex: winter cover crops), conversely, agency staff need to access land to verify lease conditions are being met and/or to install practices. Conditions need to be clearly stated and formulated so that conservation is not impeded.

Rental rate structures

While rates should be set to ensure equity and transparency, adjustments based on yield or commodity prices or revenue-sharing cost structures may disincentivize more diverse crop rotations and innovative practices that carry the risk of reduced yield.

The lease agreement is the tool that allows the land owner and the tenant to not only formalize the expectations and roles, but also to build a solid foundation for a working relationship between them. Public agencies that lease farmland already have a lot of the legal and administrative infrastructure to enhance their written agreements. The provisions outlined above demonstrate the range of options an organization has to create a lease agreement that supports transition to regenerative agriculture, works within their existing conditions, and provides mechanisms to enforce implementation.

An organization can start by adopting one or two provisions that may be easier to implement, such as extending the term of the lease. As relationships between the organization, i.e. the landowner, and the farmers in the community progress, additional conservation measures can be included in the lease in a way that distributes some of the risk and financial burden in an equitable way while allowing for verification and transparency. Many of the lease provisions outlined here can be also utilized in the private sector. Additional resources on farm leases are provided by the [Farmland Information Center](#) and [Vermont Law School Center for Agriculture and Food Systems](#).