

Incorporating Conservation Provisions in Leases

Adopting conservation practices on leased land can benefit both the landowner and the tenant. However, differences in landowner and tenant goals can create potential tensions around conservation practice adoption. Understanding these tensions and incorporating specific clauses in lease agreements can address the tensions and provide confidence that each party's objectives are recognized.

Both tenant and landowner need to understand and agree on proposed conservation activities because both parties have an interest in preserving the quality and productivity of farmland. A tenant, aiming to maximize crop profitability, may seek a conservation practice that would benefit productivity. A landowner, aiming to maximize land as an investment, may seek a conservation practice that preserves and improves land value. Either the tenant or landowner can initiate a discussion about conservation practices. Neither should take a unilateral action.

MU Extension publication G421, *Conservation Provisions in Leases*, presents introductory information on talking with your tenant or landowner about including conservation activities in a lease. This guide includes topics that should be discussed and understood prior to incorporating conservation practices into a written land lease. This assumes that the lease discussion has begun, and tenant and landowner are seriously considering incorporating one or more conservation practices into the lease. Sample lease wording for various conservation considerations is provided at the end of this guide.

Conservation and lease topics that require thoughtful discussion, consideration and documentation include:

- Outside contracts with the governmental agencies or ecosystem markets (i.e., entities that pay farmers to manage their land in such a way as to provide benefits to soil, water, biodiversity or carbon credits)
- Responsibilities of both tenant and landowner to incorporate a successful conservation plan
- The life of the conservation practice relative to duration of the lease

Outside contracts

Background

Several federal, state and local government agencies have programs that compensate farmers for conservation practices on agricultural land.

The U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) pays farmers for implementing conservation practices through the Environmental Quality Incentive Program (EQIP). Each NRCS conservation practice specifies the activities that need to be completed and the payment rate for those practices. The USDA Farm Service Agency enters into contracts lasting 10 or more years through the Conservation Reserve Program (CRP). The CRP provides cost share on conservation practice establishment costs and pays an annual rental fee for the duration of the CRP contract.

Nongovernmental organizations (NGOs) may offer payment to farmers for easements that specify how a tract of land must be managed (e.g., wildlife habitat protection). Ecosystem markets may also pay farmers for implementing certain land practices, such as using no-till or planting cover crops.

Contracts with outside entities specify what activities can or cannot be done, payment rates and schedules, and the term of the practice (single year to an indefinite period). Most contracts pay the farmer after an initial activity (e.g., grass planted, pond constructed, fence installed) is completed. Some contracts specify that if the conservation activity is not maintained during the specified term of the agreement or plan, payments will be forfeited and, in some cases, past payments must be returned.

Legal concerns

The landowner is almost always involved in signing conservation contracts because conservation practices often involve permanent land improvements.

A tenant can initiate a contract with an outside party but will usually need to get written agreement from the landowner to finalize the contract. A lease contract lasting until or beyond the term of the conservation contract may be needed to demonstrate landowner agreement and to protect the tenant from the risk of

Written by

Ray Massey, Extension Professor, Agricultural Business and Policy

Jacob Hefley, Field Specialist, Agricultural and Business Policy Extension

financial penalties required after the expiration of the lease.

The landowner usually is assumed to have the right to contract for conservation practices on owned land. However, this may not always be permissible when the land is legally leased. For example, a landowner must receive consent from the tenant before signing a CRP agreement with the USDA.

USDA contracts typically only pay for work that is complete. After the work is completed, USDA contracts do not normally require maintenance of the improvement. CRP is one exception to this stipulation in that the contract specifies conditions that must be met even after establishment of the conservation practice is completed. Soil and Water Conservation District contracts also have maintenance requirements. Not meeting ongoing maintenance requirements can result in financial penalties.

NGO and ecosystem market contracts typically require the conservation practice be maintained for the life of the contract. Whoever signs the contract with the outside party is responsible for all contract requirements. This condition is important if either the tenant or the landowner think the other may do something to endanger contract compliance.

Landowner and tenant responsibilities

Background

Conservation practices often entail an upfront investment followed by ongoing maintenance activities. Agreement on who is responsible for initial investment and maintenance must be discussed, agreed upon and documented in the lease.

Initial investment may require creation of a conservation plan and cataloging of required labor, equipment and supplies. If the activity (e.g., installation of tile, planting of a grassed waterway) will be hired out to a third party, the landowner is likely to pay the bill. On occasion, the tenant may choose to pay for the third-party work. If the tenant uses personal time and equipment to install the conservation practice, the tenant needs assurance of compensation for that labor and equipment-use. How to repay the tenant for any unrealized benefit from the conservation practice should be discussed, agreed upon and documented in the lease.

Maintenance of conservation practices may be slight or significant. Slight maintenance may simply be refraining from damaging the improvement (e.g., not driving on saturated grassed waterways). Significant maintenance can involve repair of structures, replanting and weed control. Who will conduct and pay for

necessary supplies for maintenance should be discussed, agreed upon and documented in the lease.

Legal concerns

The first legal concern is ensuring that a practice is permissible. Leases often state activities tenants can and cannot do. Permanent changes to the land (e.g., installing grassed waterways, ponds and buildings) require landowner approval before installation.

Each party needs to understand potential liability for their actions before each agrees to the conservation practice in the lease. Damage or destruction of a conservation practice by either tenant or landowner may involve significant costs to repair and penalties for not fulfilling the contract (mentioned above).

Duration of lease

Background

Most conservation practices requiring land structural changes persist many years. Most land leases are for one year. However, more than 60 percent of leased land has been farmed by the same tenant for more than seven years — indicating that conservation can be incorporated into standard lease agreements. The tenant will likely control the land for the life of the conservation practice; the landowner will likely have the same tenant for the life of the conservation practice.

Landowners may want assurance the tenant will be willing and able to carry out a conservation practice before committing to that practice on their land. A landowner signing a long-term contract for conservation (with government agencies, NGOs or ecosystem markets) will need the tenant's commitment to implement and maintain the practice.

Tenants may be hesitant to invest time and resources on a conservation practice that will not directly benefit their business. They are likely to want assurance that they have sufficient years to recoup their investment in the conservation practice or that they are reimbursed for their contribution if they lose the lease on the land.

Tenants may seek long-term leases when conservation practices are incorporated. However, landowners have often been hesitant to sign long-term leases. Concerns with long-term leases expressed by landowners include removing a tenant for subpar performance, the ability to make necessary changes in lease terms or rental rates, and difficulties when selling or distributing land via inheritance prior to the end of the lease.

A critical part of a successful lease incorporating conservation provisions is that both landowners and tenants understand how a conservation practice will impact production in each year.

Legal concerns

Written leases specify when the lease ends and how it could be extended. Neither tenant nor landlord need to take specific actions for the written lease to end on the date specified in the agreement — unless the lease indicates otherwise.

Oral leases complicate land management plans exceeding one year. In Missouri, generally, a verbal lease is not valid for more than one year. However, a verbal land lease that is extended past one year automatically becomes a year-to-year tenancy that continues until the landowner gives proper termination notice to the tenant. Missouri statute states that the landowner give notice to terminate a year-to-year lease 60 days prior to the end of the current lease year. Therefore, although a year-to-year tenancy may exist, the lease can be terminated prior to realizing the conservation benefits or the conservation contract's ending.

Additionally, an oral lease greatly increases the likelihood of misunderstanding, confusion or disagreement over each of the landowner's and tenant's responsibilities with respect to the conservation practice. Without a written agreement, the landowner and tenant are forced to rely on memory and their recollections of the agreement. Experience suggests that memories fade and what once seemed clear becomes hazy with the passage of time.

The death of the contractee impacts USDA conservation contracts. If a landowner has a contract with the USDA (e.g., CRP or EQIP), the heirs can continue the contract or notify the USDA that they want to end the contract on their land.

Death of either tenant or landowner can create special problems for an oral lease containing conservation provisions. Missouri law specifies that when one party dies, the other party cannot testify to the terms of the agreement in court. This means that special reimbursement provisions, unless written down, may not be enforceable. Written contracts benefit both the landowner's and tenant's heirs by documenting the original decisions made.

Similarly, if the farm is sold while the conservation provision or plan is in place, special reimbursement provisions may not be binding on the new owner if the provisions weren't disclosed during the sale process. A written contract avoids this scenario.

Contract provisions

The following lease clauses are examples of wording about conservation practices that may be used to create or modify a lease. These are provided to demonstrate how conservation might be included in a lease agreement. Not all of these clauses are relevant to all leases.

- “The tenant is not responsible for any specific conservation practice on the land other than following good farming practices (see the USDA Risk Management Agency definition for crop insurance coverage) and conservation compliance (as defined by the USDA NRCS) unless the lease or valid addendum specifies a conservation plan has been attached.”
 - “The tenant agrees to maintain, at tenant’s cost, conservation compliance and abide by any conservation plan that has been approved by [entity approving the conservation plan].” It is recommended that the conservation plan be attached as an addendum to the lease.
 - “The tenant agrees to maintain, at tenant’s cost, compliance with the provisions of the attached ecosystem contract: [contracting entity and contract identifier].” It is recommended that the ecosystem contract be attached as an addendum to the lease.
 - “The tenant agrees to perform all obligations imposed upon the property by the attached conservation plan and ecosystem contract in exchange for [insert reimbursement or payment language as appropriate].”
 - “The tenant will compensate the landowner for any penalties or repayment requirements resulting from tenant failure to abide by conservation practices and ecosystem contract provisions that are specified in this lease (via lease agreement or addendum).”
 - “If the tenant, for any reason, ceases to lease the land, the tenant will be released from, and the landowner will assume, the conservation contract obligations and benefits, including all payments and penalties.”
 - “The tenant will adopt the following conservation practices (check all that apply):
 - No-till
 - Minimum till
 - Practices that are expected to leave [specify percent] of crop residue until planting time
 - Plant and maintain cover crops
 - Other _____”
- Note: It is recommended that precise language be incorporated into the lease. For example, the adoption of cover crops might be clarified as to what types of cover crops are planted, who will pay for the seed, when they can be terminated, and who will receive any revenues from cover crop planting contracts, etc.
- “The landowner will pay for all materials needed to maintain the conservation provisions. Payment will be made within [specify number] days of receiving an invoice from the tenant or input supplier.”

- “The tenant will provide labor and equipment necessary to maintain the conservation provisions at tenant’s cost.”
- “The tenant is responsible for all repairs, including purchase of necessary supplies and remediation, when agricultural activities or equipment cause damage to conservation practices.”
- “The landowner will reduce rent by the following schedule to compensate for the cost of adopting and managing the conservation practice. Rent reductions are not in effect if not specified on the schedule below. [Include a schedule similar to Figure 1.]”

| Year | Rent reduction |
|------|----------------|
| 2025 | \$15/acre |
| 2026 | \$10/acre |
| 2027 | \$5/acre |

Figure 1. Example rent reduction schedule.

- “This lease can be terminated following notice and an opportunity to remedy if the tenant does not follow good farming practices (see USDA Risk Management Agency definition for crop insurance coverage) or violates any provision of the lease.”
- “Should the landowner terminate the lease for any reason prior to the agreed upon date in the lease, the tenant will be compensated for conservation improvements on the land according to the following schedule. [Include a schedule similar to Figure 2.]”

Note: [Download the spreadsheet for automating the calculations in Figure 2](#) (extension.missouri.edu/media/wysiwyg/Extensiondata/Pro/AgBusinessPolicyExtension/Docs/improvement-amortization.xlsx).

Summary

Landowners and tenants can both benefit when their responsibilities concerning conservation practices are specified in a written land lease.

Written leases also facilitate longer-term leases that can accommodate the life of conservation practices. Because conservation practices may provide benefits well beyond the establishment year, tenants have an interest in a lease length that will allow them to benefit from

| Description | Example | Improvement |
|--|---|-------------|
| Project details (description and location) | Fencing of North 40 of Smith home place | |
| Tenant materials contribution | \$0 | |
| Tenant labor contribution | \$5,000 | |
| Tenant equipment contribution | \$5,000 | |
| Total contribution of tenant to improvement¹ | \$10,000 | |
| Number of years improvement will be amortized² | 20 | |
| Annual amortization | \$500 | |
| Date amortization begins | 8/1/2020 | |
| Date amortization ends | 12/31/2025 | |
| Years of amortization | 5.4 | |
| Amortized value | \$2,709.59 | |
| Amount to repay tenant | \$7,290.41 | |

1. The tenant should value materials, labor and machinery (and possibly management) contribution.
2. This is the number of years the improvement is expected to contribute to production. It is not the length of the lease or the life specified in tax forms.

Figure 2. Example tenant contribution reimbursement schedule.

improvements they make to the land. Conservation practices improving the land benefit landowners by maintaining or improving land values, productivity and soil health.

In addition to a well-written lease, maintaining a record of communication (i.e., notes from personal meetings, texts, emails, letters) provides documentation on specific details that were discussed and agreed to between tenant and landowner.

Incorporating language about conservation practices into a written land lease provides another reason that leases should be written.