



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



HARRY R. HUGHES CENTER FOR
AGRO-ECOLOGY, INC.

NORTHEAST
SARE
Sustainable Agriculture
Research & Education

Agricultural Conservation Leasing Project

Sarah Everhart
Managing Director, ALEI



Nancy Nunn
Assistant Director
Hughes Center

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.

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. 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



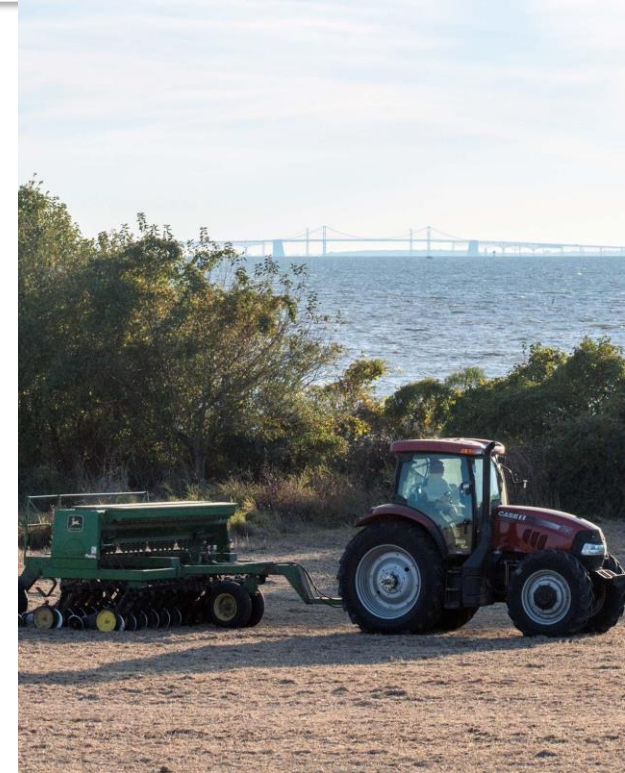
- Conservation practices are less prevalent on leased farmlands
 - 43% of MD farmland is leased (2017 USDA Census of Agriculture)
- Why?
 - Lack of communication between farmer and landowner
 - Leasing uncertainty (unknown term of lease, return on investment, etc.)
 - Lack of knowledge of farming and conservation practices

Value of Conservation Practices & Leases



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
MPOWERING THE STATE

- Bay Clean-up
 - Increasing conservation on leased agriculture lands is needed to achieve Phase III WIP goals
- Leases
 - Handshake leases put both parties at risk of misunderstandings, financial loss and legal conflict



How Can a Lease Help?



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

- A lease can be a valuable tool to implement conservation practices
- Simple lease language can establish the foundation to implement conservation practices in a mutually beneficial way



Agricultural Conservation Leasing Guide



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE



EXTENSIONBULLETIN

SEPT. 2018 | EB-434



Agricultural Conservation Leasing Guide

Download at umaglaw.org

The Guide helps landowners and farmers with the **Who, What** and **How** of conservation on leased farmland.

-**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

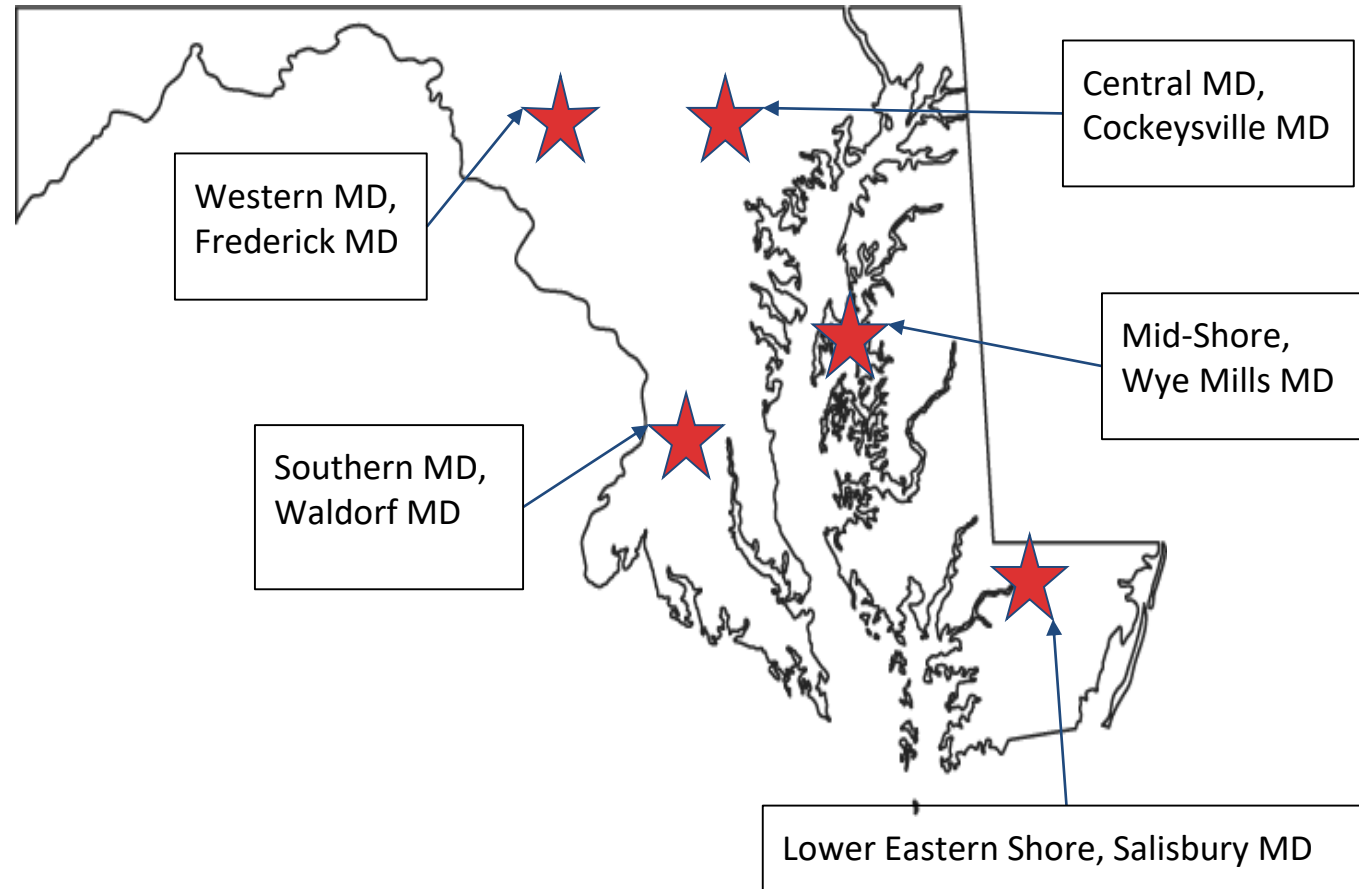
-**How**- sample lease language to support specific practices

Workshops and Webinar



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

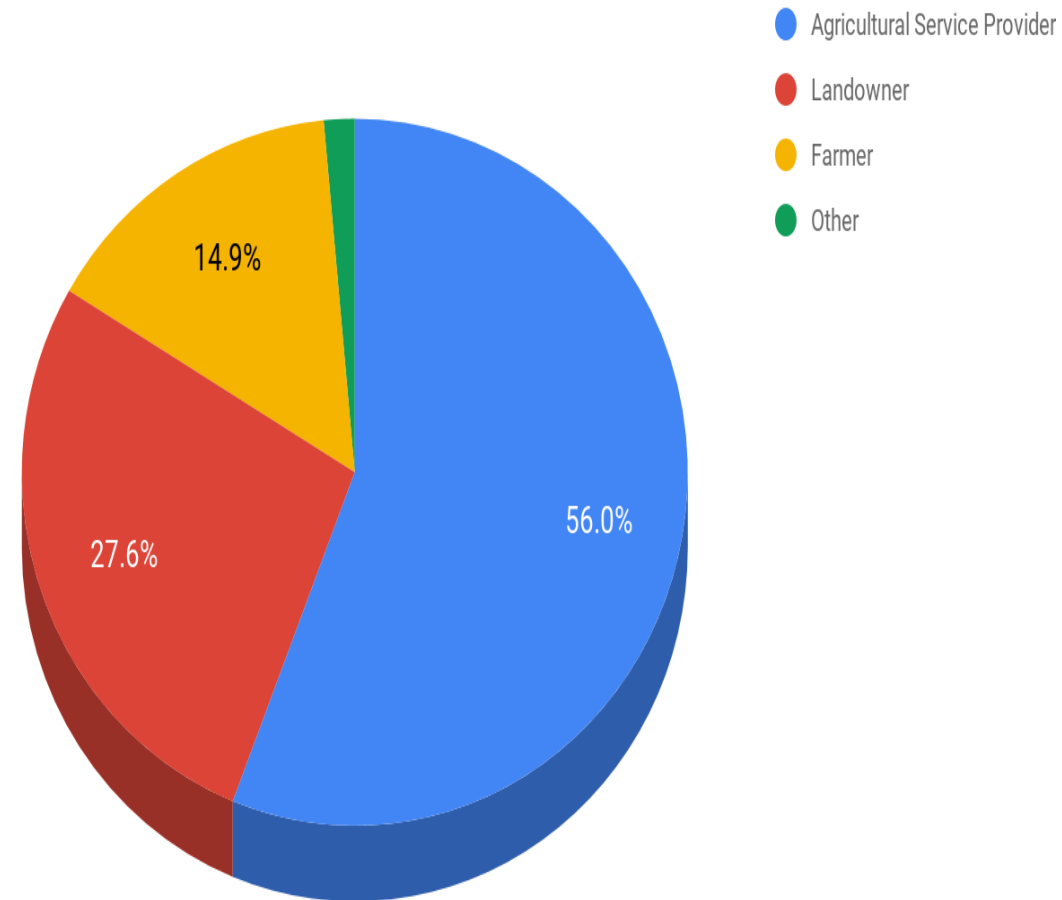
- 5 Regional Meetings
- 1 Webinar



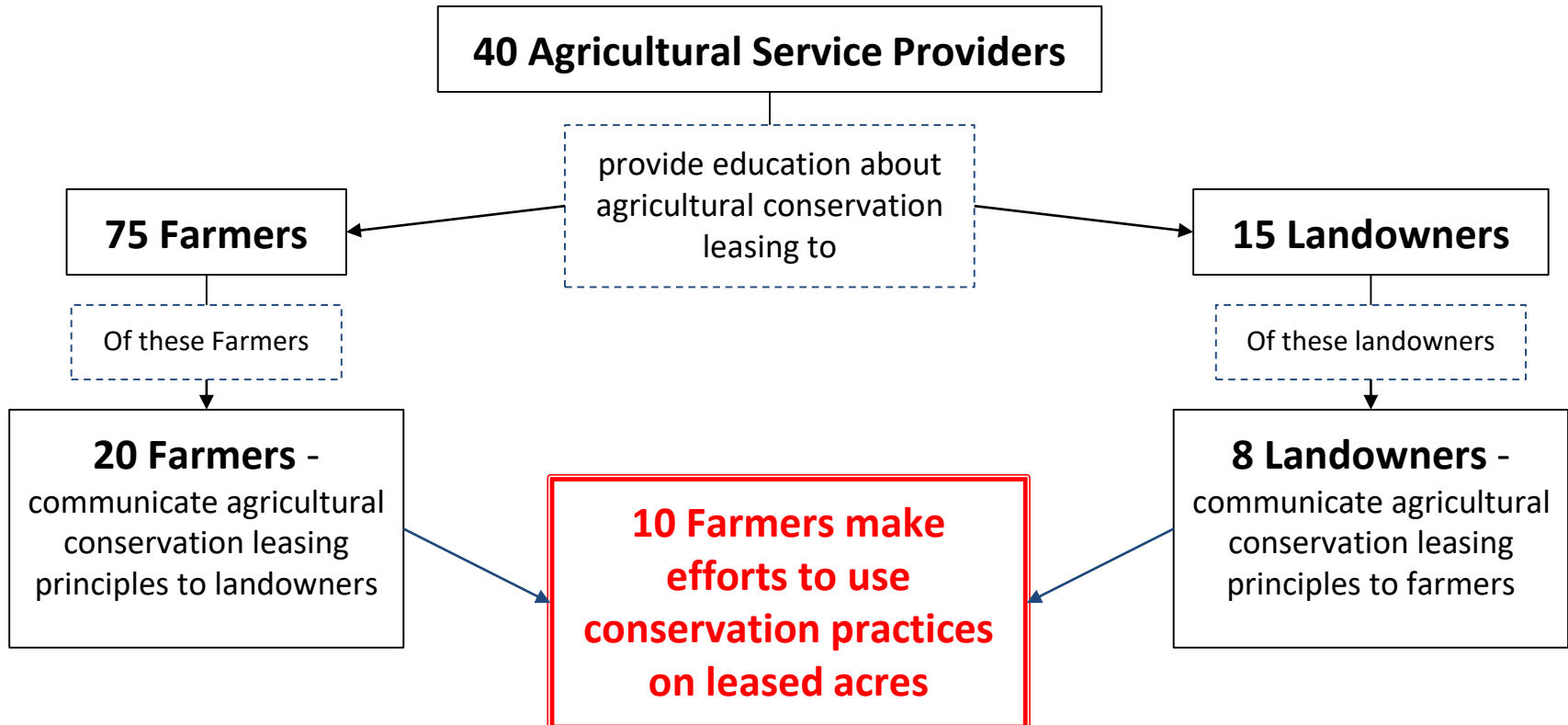
Attendance by Region and Affiliation



Region	Total
Lower Eastern Shore	13
Mid-Shore	25
Southern MD	30
Western MD	23
Central MD	19
<i>Total Participation</i>	<i>110</i>



Project Goals



Structuring a Lease to Support Conservation



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

- Communicate to assess goals and priorities
- Consider alternative forms of leases
- Length of the lease matters
- Set farming standards
- Should rent reflect investment and/or impacts on yield?
- Compensation for maintenance? (division of cost-share, rent, etc.)
- Address specific practice(s) in the lease



Questions to Ask Yourself and Other Party



- How could conservation practices benefit the land?
- What impact will the practices have on the my bottom line?
- What are you willing to contribute?
 - Financial
 - Cost-Share
 - Non-monetary
- How can we collaborate to make the implementation and maintenance of conservation practices equitable?

Type of Lease



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
MPOWERING THE STATE

- Conservation practices may present risks to profitability
- A crop share rather than fixed cash lease may be appropriate to share the risk



Length of Lease



Longer term leases can increase farm incentives for conservation methods, but may present issues of obligation for the landowner

Benefit for Landowner	Drawbacks for Landowner
More farmer investment	-Inability to renegotiate terms -May chill a sale due to long term of obligation

Solutions ?



Alternatives to a Longer Term

- Establish a longer term but reserve right to annually renegotiate the rental rate
- Include a renewal provision which allows, but does not mandate, a longer term
- Right of first offer
 - Gives the first opportunity to purchase the property before the landlord offers it to third parties
- Right of first refusal
 - Gives the opportunity to match an offer made to purchase the farm

Establish Standards



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
MPOWERING THE STATE

- Define standards of good husbandry
- What is good farming?
 - Using certain practices
 - Maintaining certain nutrient levels in the soil?



Establish Standards



-Tenant shall follow the farming best practices of the Maryland 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 conservation plan dated _____ and as amended from time to time.

Consider the Costs of Conservation Practices



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
MPOWERING THE STATE

- Possible costs include
 - Initial implementation/construction
 - Yield loss
 - Maintenance
- Consider addressing costs in the lease
 - Rent can be discounted
 - Cost-Share/Program payments can be shared
 - Non-monetary benefits (ex. longer lease term)

Sample Compensation



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
MPOWERING THE STATE

Provisions:

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.

Depreciation Schedule



- Helps safeguard the farmer's investment in case the lease ends before the practice is developed
- A depreciation calculation allows farmer to be reimbursed by the landlord if the lease is terminated

Conservation Practice	Tenant's Net Cost of Installation	Annual Rate of Depreciation	Date Depreciation Begins
Grassed waterway	\$1,250	10%	8/1/2017

Using the Ag Conservation Leasing Guide



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
MPOWERING THE STATE

- Let's work through some examples.
- For each scenario, refer to the Guide and discuss with your group:
 - What the parties can do to facilitate communication?
 - What partners the parties could work with?
 - What conservation leasing strategies can be used?
 - Come up with as many options as possible and try to craft a mutually beneficial resolution.

Conservation Leasing

Scenario 1



- Lenny Landowner is interested in a riparian buffer on the farm but is not very knowledgeable.
- Farmer Dell is concerned the practice will be difficult to farm around and will take land out of production.
- Dell is also concerned about the maintenance and associated time & costs.
- Lenny doesn't want to lose Dell as a tenant and doesn't need any cost-share funding.
- What can the parties do to facilitate the implementation of the buffer?

Conservation Leasing

Scenario 2



- Farmer Brown has noticed an area of the farm he rents with increasing soil erosion and poor production value.
- Brown knows the farm could benefit from a grassed waterway.
- Lisa Landowner values conservation but lives out of state and rarely visits the farm.
- The farming lease is on a handshake and Brown doesn't want to risk making an investment or applying for cost-share funding for a practice on land may not even be farming next year.
- What can the parties do to work this out?

Conservation Leasing

Scenario 3



- Leo Landowner recently purchased land that Farmer Tom has farmed for a decade without a written lease on a fixed rent basis.
- Leo is interested in integrated pest management (IPM) and would like to assess the natural resource issues on the land and get some advice on what conservation practices would be best for the farm.
- Leo wants to form a lease which sets expectations but doesn't scare Tom off of farming the land.
- How should the parties proceed and if Leo insists on Tom using IPM how can risk be shared?

Conservation Leasing

Scenario 4



- Les Landowner has leased his farm for many years to Farmer Bill on a year-to-year lease and is happy with Bill's work.
- Les is planning a retirement in Florida and although he would like to offer Bill a lease for a longer term he is afraid doing so may prevent a sale of the property.
- What can Les do to give Bill security while keeping the property free of a long term lease

Workshop Feedback



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
MPOWERING THE STATE



Attendees overwhelmingly reported increased knowledge in:

- Farm leasing principles (97%)
- Communicating conservation priorities (94%)
- Incorporating conservation into leases (97%)



Anticipated Impacts

“Work with colleagues to increase outreach to farmers with the intent of increasing written leases”

“Let farmers and landowners know that Extension and ALEI have resources to help with writing a lease that is beneficial to both parties”

“Implement more conservation practices and more specifics in our leases”



Next Steps



- 2 years of technical support following workshops/webinar
- 6 month and 1 year milestones to assess impacts
- Examples include
 - Agreeing to follow a conservation plan
 - Applying for cost-share funding or technical assistance for a practice
 - Entering into a new lease with conservation practice provisions
 - Amending an existing lease to include conservation practices
 - Using or expanding the use of an agricultural conservation practice

Upcoming Webinar



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

- Structuring Cost-Share for Conservation Webinar
- June 5, 2019, 12:00 p.m. EST
- Speakers: Laura Pleasanton (FSA), Norm Astle (MACS) and Brent Cammauf (NRCS, District Conservationist)
- Learn how to help your stakeholders structure and share cost-share funding to support conservation practices.
- Register today on Hughes Center website
<https://agresearch.umd.edu/agroecol>

Collaborative Partnerships



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
MPOWERING THE STATE

- The Nature Conservancy (TNC) and partners have been supporting work to understand this issue and specifically non-operating landowners in Iowa, Indiana, and Illinois
- TNC and partners including UMD Harry Hughes Center, MDA, and UMD ALEI plan to expand this work to the Chesapeake region
- The focus is finding incentives that benefit both NOLs and their farmers to increase adoption of conservation practices that benefit water quality and soil health.

Thanks



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
MPOWERING THE STATE

Questions?

Nancy Nunn

[nnunn@umd.edu/](mailto:nnunn@umd.edu)

410-827-8056

Sarah Everhart

[severhart@law.umaryland.edu/](mailto:severhart@law.umaryland.edu) 410-458-2475

