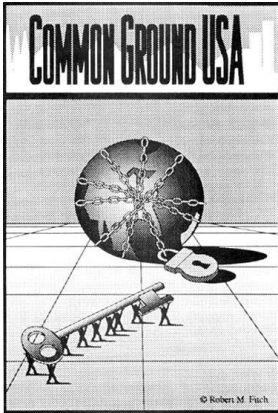


SETTING UP A RENT-SHARING FARM TRUST IN MINNESOTA:

A report prepared on behalf of Common Ground USA

External resources attached



Farm Trust Research and Resources

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INTRODUCTION

Rent-sharing Farm Trusts are a commons-based approach to farmland issues. These farm trusts could have non-contiguous properties in them and wealth/income eligibility requirements for beneficiaries, who would have title to any buildings or improvements on the farms. But full market rent would be charged from farmers renting land from the trust, forming a pool of funds from which administrative expenses would be partly paid, with the surplus in the pool being returned to the farmers as an equal “dividend” or rent credit. The latter “rent-sharing,” commons-based feature distinguishes these trusts from other farm-trust approaches. This distinguishing feature makes land access affordable in a fair and transparent way, and provides a monetary incentive for farmers to rent from the trust rather than renting from a private landowner or borrowing to purchase land. It also serves as an alternative model to the current dysfunctional farm-subsidy system by showing that equal credits could be provided to all working farmers rather than the amounts determined and influenced by lobbyists that are currently paid to land owners, whether they work the land or not.

REPORT PURPOSE

After an earlier report produced for Common Ground generated interest among farming-related non-profit groups, funding was granted by the national Common Ground organization to research in more detail how a Rent-sharing Farm Trust would be implemented in Minnesota, especially with regard to its organizational structure, its rent-sharing feature, and the steps

needed to establish such a trust.

KEY INTERVIEW FINDINGS

Jan Joannides of Renewing the Countryside (RTC) is deeply researching farmland trusts and the possibility of establishing one in Minnesota. Jan believes that farmland trusts have benefits that are not available through other strategies, including:

- ◆ A trust is able to guide use of the land, and has resources to enforce that by, for example, ensuring that it is actively being farmed, steering land towards beginning farmers, or creating a conservation farming plan.
- ◆ They can accept large donations of land and money and use that wealth to provide access to land for beginning farmers who have no other options.
- ◆ Trusts provide a platform to tell the story of successful farm preservation and transfer and access. This can inspire farmers to participate or pursue their own unique strategies, and inspire donors to give. (SILT has had rapid success with this).
- ◆ There is a lot of infrastructure and support within the land trust sector from organizations like the Land Trust Alliance.
- ◆ Trusts can access unique funding:
 - Foundation investment dollars (not grant dollars). Jan is talking with some foundation investment teams and they seem pretty cautious, although they are more comfortable investing in affordable housing. Jan is trying to tell the story of affordable housing land trusts and make the connection to agricultural land trusts.
 - Legacy funding, potentially.
 - State and federal dollars available for farmland preservation.
 - Potential donor base of Twin Cities food co-op members.

Amy Bacigalupo from Land Stewardship Project provided several resources to beginning farmer programs and suggested that it could be an avenue for finding farmers. LSP has compiled a lot of research on the land access problem (See Appendix A-1). LSP is interested in the rent-sharing trust concept but does not currently have the resources to fund a project or to research a project.

Suzan Erem of Sustainable Iowa Land Trust was an invaluable resource, having recently gone

through the process of forming a non-profit land trust and within 2 years achieving great success in securing land donations and easements. SILT has been featured across the country for their success. Suzan recommends developing a business plan as soon as possible for this type of idea in order to “pitch” to potential slow money investors/lenders. A business plan should include administrative costs as well as an explanation of how the farm-trust is addressing a larger issue of land access. Suzan also found that the \$10k spent on professional public relations services to promote the launch of the trust was money well spent. She also believes it’s important for these trusts to pay property taxes – even if they would qualify for tax exemption as non-profits – so that the surrounding community will be more welcoming of them.

Russ Fox from Washington state’s South of the Sound Community Farm Land Trust (SSCFLT) also provided great insight to farmland trusts. For its 150-acre Scatter Creek Farm and Conservancy acquisition, another local conservation land trust, Creekside Conservancy, became the owner of the 50 acres of conservation land and SSCLT assumed ownership of 100 acres of prime farmland and along with its anchor farm (Kirsop Farm) of the substantial farm infrastructure that existed on the property. They’ve had demonstrated success in their farmer-leasing programs and have grown to the point of hiring full time staff.

Susan Stokes, formerly of Farmer’s Legal Action Group and now Assistant Commissioner of the MN Department of Agriculture, provided invaluable assistance relating to interpretation of the Corporate Farm Law (CFL).

Teresa Opheim from Practical Farmers was interviewed. Teresa leads Practical Farmers’ Farm Transfer Programming to help new farmers secure land and help older farmers transfer their farms and businesses to the next generation. She is a good resource for introducing new farmers to experienced farmers who are looking to transfer their land but make sure it continues to be farmed.

A Rent-sharing Farm Trust Example for Minnesota

Feedback on the prior report for Common Ground suggested that any such trust should first focus on acquiring 5-acre farms because this smaller size would increase the chance that land would be donated. The following hypothetical example thus models the trust in 5-acre increments.

This project used data from the September, 2016 “Cropland Rental Rates for Minnesota Counties” from the University of Minnesota to calculate the following average rental rates by Minnesota region:

Region	Average Cropland Rental Rate
Southeast	\$212
South Central	\$227
Southwest	\$199
East Central	\$64
Central	\$150
West Central	\$157
North Central	\$24
Northwest	\$96

Hypothetically, if the trust used 50% of the collected rental fund for administrative expenses, the following rent credits and net rents would result:

Farm	Rent/acre	Acreage	Annual Rent	Rent Credit (50% of Rental fund/8 farms)	Annual Net Rent
Southeast	\$212	5	\$1060	\$1,296	(\$236)
South Central	\$227	10	\$2270	\$1,296	\$974
Southwest	\$199	15	\$2985	\$1,296	\$1,689
East Central	\$64	20	\$1280	\$1,296	(\$16)
Central	\$150	25	\$3750	\$1,296	\$2,454
West Central	\$157	30	\$4710	\$1,296	\$3,414
North Central	\$24	35	\$840	\$1,296	(\$456)
Northwest	\$96	40	\$3840	\$1,296	\$2,544
		Rental fund =	\$20,735		

This project has tentatively identified the following administrative costs:

Item	Annual Cost
Contractor working ¼ time to administer program	\$15,000
Communications	\$1,000
Events	\$1,000
Other (travel, contractor, etc.)	\$5,000
Costs associated with gifted land	\$25,000*
Land acquisition fund	\$4,200 (20% of rental fund)
Estimated property tax	\$2,000
Total	53,200

*This \$25k amount for “Costs associated with gifted land” is based on information from The Nature Conservancy, which engages in activities very different from those in this proposal. So this amount may be very inaccurate and actual such costs may be best obtained from hiring an attorney to review this proposal.

Thus, in this example if the 8 farms paid \$10,368 (half of the \$20,735 rental pool) towards administrative expenses, then the remaining \$42,832 in administrative expenses would need to be collected from foundations or other sources. Of course, if the trust continued to grow in acreage, it would eventually become self-sustaining.

DETAILS ON POTENTIAL CORPORATE STRUCTURE

I. Structure

Ownership of farmland in Minnesota is controlled by the Corporate Farm Law (CFL). The CFL puts restrictions on the types and amounts of farmland that can be held by certain corporate entities. This project researched two questions related to the trust's structure:

- What are the limitations/restrictions on non-profits owning and leasing land under the CFL?
- What is a Public Benefit Corporation and could a Public Benefit Corporation benefit from an exception under the CFL?

A. Non-profit land trust (NLT)

The most logical corporate organization for a farm trust would be as a tax-exempt nonprofit under the Internal Revenue Code. The CFL provides an exemption for nonprofits to own farmland in certain circumstances and in Minn. Stat. 500.24, Subd. 2 (z) gives the following definition:

"Nonprofit corporation" means a nonprofit corporation organized under state nonprofit corporation or trust law or qualified for tax-exempt status under federal tax law that: (1) uses the land for a specific non-farming purpose; (2) leases the agricultural land to a family farm unit, a family farm corporation, an authorized farm corporation, an authorized livestock farm corporation, a family farm limited liability company, a family farm trust, an authorized farm limited liability company, a family farm partnership, or an authorized farm partnership; or (3) actively farms less than 160 acres that were acquired by the nonprofit corporation prior to August 1, 2010, or actively farms less than 40 acres that were acquired by the nonprofit corporation after August 1, 2010, and the nonprofit corporation uses all profits from the agricultural land for educational purposes."

This type of rent sharing farm trust could potentially fall under Exemption 2 and Exemption 3. Both exemptions are limiting. Under Exemption 2, the nonprofit would have to be leasing out

to one of the other exempted types of organizations of the CFL – probably a family farm unit in this case.

Under Exemption 3, the nonprofit is limited to actively farming less than 40 acres and the profits must be used for educational purposes. Exemption 3 is not clear as to a few points:

- if a nonprofit is leasing land out to a 3rd party, is it *actively farming*?
- what is the definition of ‘educational purposes’?
- is the cap of 40 acres a total acreage cap or could a nonprofit hold more than 40 noncontiguous acres?

All of these questions will require clarification by the agency.

B. Minnesota Public Benefit Corporation Act (MPBCA)

A Public Benefit Corporation (also called a B-Corp) is a new type of corporate formation in Minnesota where the purpose of corporation is to be socially minded instead of run exclusively for profitability. Unlike a nonprofit, there is no tax benefit to being a B-corp. The real reason to be a B-Corp is to communicate to the shareholders that the public benefit of the company is more important than the profits made.

The reason that the MPBCA is interesting is because the CFL has not yet addressed the B-Corp structure and it seemed possible that this could be an avenue for legislative change. Several interviewees, when asked for their perspective and advice as to amending the CFL to provide an exception for MPBCA, were not supportive of such an effort. The CFL is extremely politically sensitive in MN. It has been largely agreed upon by the nonprofit community, industry and at the legislature to not reopen the CFL.

Without the support of at least the nonprofit community it is unlikely that legislative change will be possible on this issue. The implications of opening the CFL for legislative change may not be worth the effort, particularly because the CFL provides an exemption for nonprofits already.

II. Taxes paid as NLT and B-Corp

A B-Corp will have to pay traditional taxes on property held and on income earned from the property. A donor who bequests a gift to a B-Corp will not receive a tax deduction for their donation.

A nonprofit that receives 501(c) 3 status can also file to be tax exempt. A tax-exempt entity does not have to pay property taxes but, because some communities are sensitive to privately held land that is not taxed, any farm trust may want to pay property taxes anyway. Donations to tax-exempt entities are eligible for tax deductions.

III. Rent-sharing

The term “dividend” is often used in other commons-based approaches, such as proposals to tax carbon emissions and return the funds to taxpayers as equal “dividends.” But according to attorneys interviewed for this project, use of the term “dividend” by a nonprofit is inadvisable because it connotes a for-profit venture. Thus, a rent-credit approach as outlined above is preferable and a paid legal opinion on the viability of this rent-credit approach is recommended.

Next Steps

Although in an affordable housing context, the following steps outlined by the Community Land Trust Network are applicable to this project:

- Develop a shared vision
 - Build and sustain coalitions
 - Organize the community
- Decide who your trust will serve and how
 - Identify and discuss assumptions around business planning
- Choose an organizational and governance structure for your CLT
 - Decide if your organization will be independent or a program of another
 - Decide on board structure and start recruiting board members
- Have an execution plan for the next 12 months and the next 5 years
 - Complete the task list on major activities for start-ups

- Build partnerships
- Determine what kind of resources you will need for execution
 - Create a budget for the organization
- Lay the groundwork for your first project
 - Customize the model ground lease
 - Educate the community partners

Conclusion

Any working group formed to advance this proposal may want to make it a priority to hire an attorney to answer a number of questions this report was unable to sufficiently answer (e.g. what, if any, implications the rent-sharing feature may have for non-profit status, what are the exact costs associated with gifted land) and to draft documents for establishing the trust. Other priorities for such a working group would also include consulting with attorneys at the MN Department of Agriculture to verify compliance with the Corporate Farm Law, developing a business plan, and deciding on the trust's governing structure. Though challenges remain, the findings of this report -- and the encouragement provided by those interviewed for it -- show that it is worthwhile to continue trying to set up a Rent-sharing Farm Trust in Minnesota.

Appendices

Appendix A-1 – Excerpts from Land Stewardship Project’s re



LAND STEWARDSHIP PROJECT

Land Stewardship Project is working to foster an ethic of stewardship for farmland, promoting sustainable agriculture and developing healthy communities. Farm Beginnings is a program of the Land Stewardship Project that works to get more successful farmers on the land and organize for a system in which family farmers can flourish.

To learn more visit our website at www.landstewardshipproject.org or contact Amy Bacigalupo at 320-269-2105 or by email asbacig@landstewardshipproject.org

Land Stewardship Project's Land Trust Research

- A) **Definition of a land trust**
- B) **National dynamic**
- C) **What's happening in Minnesota?**
- D) **Other relevant regional and national land trust action**

A. Definition of a land trust

According to the Land Trust Alliance, a land trust is “a private, nonprofit organization that, as all or part of its mission, actively works to conserve land by undertaking in land or conservation easement acquisition, or by its stewardship of such land or easements.”

B. National Dynamic

Land trusts are established to preserve farmland and increase access to farmland and are used most broadly in the Northeastern United States. They are also widely used elsewhere on the East and West Coasts. Conservation land trusts often work with farmland in these places and trusts specifically focused on farmland have also developed. In the Central US, land trusts have historically been more focused on preserving land that has a “conservation value” and have not been open to working with farmland. This dynamic has developed for many complex reasons, but it can be partly attributed to the perception that there is no shortage of farmland in the Midwest and that farmers don't struggle to find farmland. It could also be attributed to the perceived disconnect and tension between “conservationists” and farmers (seeing farming as a threat to conservation and conservation as a threat to agriculture.) Farmland in the Northeast has been under greater threat from development in recent decades which has led to greater awareness about the need to protect working farmland. This awareness is rapidly spreading and is now quite high in the Midwest, but a similar land trust infrastructure has not yet developed here.

Within the agricultural sector, it is now widely recognized that Midwestern farmland is not immune to the pressures of development and skyrocketing property values and that farmers cannot take access to land for granted. Many local governments, organizations, and individuals in Minnesota have responded to this with a wide range of strategies- transferring conservation

easements to local government or nonprofits, connecting wealthy “angel” investors with beginning farmers in need of land, storytelling and communication campaigns about successful farm transitions, sparking deep community conversation about the importance of farmland and beginning farmers, and more.

There has been increasing interest in establishing a farmland trust in the upper Midwest. Several sustainable agriculture organizations believe that a farmland trust would offer a unique tool that is not currently available- namely a nonprofit that has the capacity to own land and make it available to beginning farmers in perpetuity through long term leases.

There are also national efforts to establish farmland trusts that may become active in Minnesota. Agrarian Trust, Yggdrasil Land Foundation, and Equity Trust are either active trusts or in the process of establishing trusts that may eventually have ‘branches’ operating in this region. American Farmland Trust and National Young Farmers Coalition are working with conservation land trusts to convince them to work with farmland. Several of these organizations are also increasing farmer awareness of land trusts as a tool and helping them work with land trusts.

C. What is happening in MN?

Jack Hedin, MISA Endowed Chair

Jack Hedin was awarded the MISA endowed chair in January 2015. He is focusing on land access strategies and farmland trusts specifically. He has hired Eamon Heberlein, a grad student at Yale University, to help him. He's also working closely with Jan at RTC. They are still in the planning phase and his project has not yet been announced.

Wide range of farmland access strategies.

In Minnesota there are no farmland trusts but many active farmland access strategies. Farmers and those who support them have found creative ways to access farmland throughout the history of agriculture, and those strategies have been extensively documented by sustainable and conventional agriculture organizations and reporters. For example, LSP has a series of farm transition profiles, each of which details an innovative approach to land access. While this document is focused on farmland trusts and the added tools that trust could provide, these strategies should not be overlooked or undervalued.

Dakota County Farmland and Natural Areas Program (FNAP)

FNAP began in 1999 in response to resident concern about the disappearance of farmland in the county. The MN Legislature gave \$200,000 to the County for a three-year planning effort, during which non-profit and government staff worked together to inventory, identify, and prioritize 80,000 acres of farmland for protection. Now FNAP works with willing landowners to purchase permanent agricultural conservation easements. The landowner retains the rights to use, rent, transfer, or sell the land, however the property within the easement cannot be developed. As of November 2014, Dakota County had preserved 9,610 acres with another 1,623 in progress. These areas include 2,692 acres of natural area (458 in progress), 6,918 acres of farmland (1,165 in progress).

Twin Cities Agricultural Land Trust

The Twin Cities Agricultural Land Trust started in 2009 when Gardening Matters hosted a film screening and discussion about the need for permanent urban agriculture space in the Twin Cities. Many gardeners, urban farmers, and garden service providers gathered together after this screening to discuss what solutions they could build and TCALT rose out of those conversations. LSP played a big role in these early years, hosting and facilitating meetings for two years and connecting with the City of Lakes Community Land Trust (CLCLT), until LSP discontinued our involvement because of limited capacity and slow development. TCALT has continued and held steady since then, and is currently housed within CLCLT. They have an active volunteer board of directors that is working on establishing a trust that could hold land for urban agriculture, be community governed and benefiting. They may be able to take control of several parcels this year, with CLCLT serving as fiscal sponsor.

Minnesota Land Trust

Minnesota Land Trust and LSP have a long relationship. MLT has consistently maintained that they are not interested in working with farmland unless it has “conservation value.” Currently they are looking at some grazing land in southwestern MN because of its conservation value.

Even though MLT is not interested in working with farmland they are very supportive of others doing this work and are willing to share their knowledge.

D. National and Regional Land Trust Activity that Affects Minnesota

Wisconsin Land Trusts

Wisconsin has many land trusts. The Gathering Waters Conservancy is a coalition of WI land trusts with 45 member organizations. Some of these land trusts seem to be working with farmland, but it is difficult to get a comprehensive list as these land trusts are varied and decentralized. There are some concrete examples: in December 2013, American Farmland Trust transferred three agricultural conservation easements in the East Troy, WI area to Geneva Lake Conservancy and in 2007 the Kinnickinnic River Land Trust purchased the conservation easement on Lyle Johnson's 195 acre farm. Natural Heritage Land Trust in Madison has protected 20 farms covering 2,500 acres in partnership with Dunn County and is working with several other towns to protect farmland in the Madison area.

[\(http://wisconsinfarmland.org/farmland-preservation-profiles/local-land-trust-a-farmland-preservation-resource/\)](http://wisconsinfarmland.org/farmland-preservation-profiles/local-land-trust-a-farmland-preservation-resource/)

Wisconsin Land Preservation Legislation

Gathering Waters Conservancy and American Farmland Trust worked together to win state funding for the Working Lands Initiative in June 2009. This Initiative includes two programs: PACE and AEA. The Purchase of Agricultural Conservation Easement (PACE) grant program provides funding for part of the purchase price of agricultural conservation easements from willing landowners. Communities can apply to the Wisc. Dept of Ag to be designated an Agricultural Enterprise Area. If designated as an AEA, farmers can enter into voluntary farmland preservation agreements and receive farmland preservation tax credits. As of October 2014, there were 29 AEAs in 22 Wisconsin counties, covering 925,000 acres. LSP should do more research on this program, as it is unclear if they are still funded and operating.

Sustainable Iowa Land Trust (SILT)

SILT was established in early 2015 after a December 2014 meeting where sustainable agriculture advocates gathered to discuss "how to protect our farms to grow healthy food forever." Suzan Erem is spearheading this work. Since the founding, SILT has garnered a lot of

media exposure and is holding meetings around the state. They have received several financial and land donations. Here are their main strategies, as outlined on their website.

- ◆ Seeking land and development rights to land around cities and towns.
- ◆ With city planners and private developers, building small farms into the planning process.
- ◆ Land trust farms will become hands-on, real- life educational centers for farmers.
- ◆ On parcels the trust owns, offer qualified farmers long-term, inheritable leases.
- ◆ Working with established farm groups to develop a web-based clearinghouse for aspiring and experienced farmers looking to grow healthy food in Iowa.

Agrarian Trust

Agrarian Trust is a project of the Schumacher Center for New Economics that was founded in 2013 by a group of young farmers and farm service providers who recognized the huge land access challenges facing beginning farmers. The Trust is spearheaded by Severine von Tscharner Fleming. Their goals are to

- 1) Build the issue of land access through public symposia, advocacy campaigns, and stakeholder meetings.
- 2) Support the network of stakeholders and service providers through collection and documentation of innovative models for land access. Create a resource portal to pool the useful tools already developed.
- 3) Build a trust that can hold and transfer land to regional land organizations, and ensure its sustainable and productive stewardship for generations to come.

The AT has the potential to be a powerful national communications platform. Severine is an incredible storyteller and public voice and has already used these tools to great effect. Severine and the AT team also have an accurate and nuanced understanding of what is needed, and are able to somewhat quickly respond to that need. I have been impressed with AT's ability to bring together and deeply listen to a broad range of stakeholders and to work with a racial equity lens- engaging Latino farmworkers and farm owners and African American farm groups from the start. I am also excited by their orientation toward serving young and beginning farmers.

The land trust itself is very ambitious. It is modeled on Terre de Liens, a French national land trust that secures farmland and offers it at reduced price, long term (lifetime, multi-generational) leases to organic farmers. Severine feels driven to create a land trust that could operate nationally but be governed locally because there are big holes in the country where there are no land trust resources and the AT could meet some of that need. Simultaneously there are a lot of wealthy people who would like to donate/ invest in this work, but no receptacle for them to donate to. The AT could be a way to direct wealth to this cause and redistribute it to regions with fewer interested wealthy people. A land trust like this would be useful and their model is exciting, but they have a long way to go before it is a reality. They have a lot of stakeholder engagement to do. It will be difficult for a national land trust to spark peoples' interest and gain their trust, and a national land trust may not be the answer. But there is definitely a need for a national entity to be a public platform and support more local trusts and the AT could be this entity.

National Young Farmers' Coalition (NYFC)

NYFC's land access work is nearly completely focused on land trusts. It has come to be this way partly because NYFC's ED accessed her farm through a land trust, and so recognized the potential there and was motivated to increase the capacity of land trusts to work with farmers. The Hudson Valley and Northeastern US are also home to more small, very local land trusts who are more open to working with farmers, and there is more of a precedent for farmland trusts as a tool. Right now NYFC has two big approaches: trying to get more land trusts to work with beginning farmers and ensure that farmland in trusts remains actively farmed, and getting more farmers aware of this strategy and working with land trusts. They have published several excellent reports on this ("Farmland Conservation 2.0" and "Farmers' Guidebook for Working with Land Trusts") and are holding trainings for land trusts around their region.

American Farmland Trust (AFT)

American Farmland Trust largely does not act as a land trust, but is more involved with getting land trusts to work with farmland and supporting farm transitions more generally. There is a lot of similarity between the work that AFT is doing and what Karen is focused on at LSP-

there is some really good cross pollination to do there and this relationship should be continued and deepened.

Equity Trust

Equity Trust is a huge resource. Most of their work currently takes place in the Northeast and California, but it seems like their resources could be usefully applied in the Midwest. Their goals, as stated on their website:

- ◆ To encourage exploration of alternative approaches to the ownership of land.
- ◆ To help local land trusts and others to preserve the affordability of farms for farmers.
- ◆ To help local groups increase community access to locally produced food.

They do this by:

- ◆ Providing counseling on land tenure issues (by phone, email, and on site) to farmers, land trusts and others.
- ◆ We work to promote alternative approaches to farm ownership through presentations, workshops, and publications.
- ◆ We provide model documents (in electronic form and on paper) for alternative approaches to farm ownership.
- ◆ We help adapt these models to particular local situations – through document- review, phone and email consultations, and on-site technical assistance.
- ◆ We work with a limited number of CSAs and others to develop strategies for funding local farm preservation projects.

Many of their sample documents could be used in Minnesota and Wisconsin, as well as their guidance. It is not clear if agricultural easements can be used in Minnesota and Wisconsin but it is a good model and has potential. [Company Address]

Yggdrasil Land Foundation

The YLF was founded in 2000 as a nonprofit that protects farmland by holding land in perpetuity. It is focused on biodynamic and organic agriculture and is a supporting organization to RSF Social Finance, Michael Fields Agricultural Institute, and the Biodynamic Farming and Gardening Association. YLF now holds 340 acres of farms located in California, Wisconsin, and New Hampshire. Two farms were land gifts, and two were purchased with gifts raised by the

community. These lands are then leased to farmers with long term leases. Their protected farms each have a unique lease arrangement- including 99 year leases, annual lease payments, and stewardship pledges.

Sustainable Iowa Land Trust

Business Plan

September 2015



319.774.3496

SILT.ORG

Prepared by Regenia Bailey, Bailey Leadership Initiative, LLC

Executive Summary

Iowa is facing the greatest transfer of land and wealth in its history in the next 20 years, when nearly 60 percent of Iowa farmland, worth an estimated \$150 billion, will change ownership.

Meanwhile, Iowa imports 90 percent of its food, while paving over 25 acres of the best soil in the world per day for development. The local food economy has increased exponentially with young people and women disproportionately represented among the farmers in that economy.

At the same time, real estate moguls, Wall Street investors and multinational corporations stand at the ready while Iowa farmers and landowners in the 60s and 70s face decisions that will determine the future of the state, currently considered the home of industrial corn, soybean, hogs and chickens. Will it belong to out-of-state investor funds, corporate interests and disinterested landowners waiting for the inevitable rise in land value? Or will it be used to secure a local food system, rebuild rural economies, improve public health and the environment and draw much-needed young people back to Iowa?

The Sustainable Iowa Land Trust (SILT) launched in early 2015 to help answer these questions. Its mission is to permanently protect land to grow healthy food. It will take land speculation out of the equation for future healthy food farmers through sole ownership of farmland and the stringent enforcement of sustainable ag conservation easements. It is also seeking partnerships among investors, developers and real estate companies to build neighborhoods that will incorporate SILT-owned nature-friendly farms into them, providing a win-win for all involved and permanently protecting more land more quickly during this massive land transfer. It is the only land trust in the Midwest dedicated to such an ambitious and vital mission.

In the next three years, SILT must dedicate marketing funds to raise its visibility throughout the state to encourage landowners to donate land or easements to the organization. SILT is building its credibility as an organization first with the impressive leadership team it has already assembled, then by raising funds to secure its future and by attaining accreditation through the Land Trust Alliance. As it acquires land and easement donations, it will use these to grow its assets by leasing SILT-owned land to qualified farmers and by providing services to landowners who donate easements and seek marketing, farming and other expertise necessary to fulfill the requirements of the easement while keeping their land in production.

“Slow Money investors have believed in the Sustainable Iowa Land Trust since its beginning. SILT is a nonprofit that’s tackling land access, healthy food and our environment in creative ways that provide opportunities for impact investors as well as philanthropists.”

Woody Tasch, venture capitalist and founder of Slow Money

SILT is incorporated under the Revised Iowa Nonprofit Corporation Act and comprises two nonprofit entities: a 501(c)3 and a 501(c)2 in formation. The c3 focuses on education and public outreach. It operates using a nonprofit business model and works to secure grant funding, large donor contributions, and funds through events and appeals. The c2 entity will hold the titles to, and collect the income from, SILT owned farms. It will charge market-based rates for services, such as farm marketing, easement management, and provision of technical assistance to farmers and landowners. Both entities are governed by a single board of directors. As SILT grows, it will hire an executive director through its c3 entity to oversee daily operations of both the c3 and the c2.

The formation of SILT is timely:

1. Awareness of industrial agriculture's impact on the nation's health and economy is at an all-time high with bestselling books by Michael Pollen and Frances Moore Lappe and movies like Fed up, Food Inc. and King Corn.
2. Increasing numbers of Iowa consumers actively seek healthy, locally grown food which in turn is spurring increased interest in farming as a small business venture that Iowa has not seen since before the 1980s demise of the family farm.
3. A month after the group's formation, SILT Board Member Bill Stowe made national news when as the CEO of the Des Moines Waterworks, he sued government entities in Des Moines' watershed for their failure to control dangerous nitrate levels. That one lawsuit has changed the entire conversation about water quality, much denied until then, across the state.
4. Mary Swander, SILT adviser and Iowa's poet laureate, has written a play called Map of My Kingdom, commissioned by the fastest growing farm group in Iowa, Practical Farmers of Iowa, that is in constant demand across the state. The one-woman performance illustrates the struggles of Iowa farmers today in deciding how to pass on their farms fairly to their children.
5. Iowans get it. In SILT's first 8 months, 30 landowners representing more than 2,000 acres of land have stepped forward to discuss land and easement donations. With more marketing and trained staff on board, many of these conversations and more will turn into food farms for the next generation.

"SILT is an innovator in using the land trust structure to conserve working landscapes in a way that works for farmers."

*Sallie Calhoun, owner
Paicines Ranch, Slow Money
investor*

SILT is seeking large donations for operating capital and its endowment as well as partnerships with for-profit ventures that will enable it to capture land as quickly as possible, to protect it in perpetuity and offer it to the next generation of healthy food farmers. Acquiring a critical mass of farms and easements will allow SILT's 501c2 to become self-sustaining and even profitable, helping to ensure the future of the entire organization.

One-half of our land is owned by people over 65, one-third by people over 75. Time is of the essence if we are to make the most of this opportunity.

Organizational Overview

In December of 2014, twenty-five of the most well-respected leaders in sustainable agriculture, development and planning parked themselves in a hotel conference room for two days and hashed out the details of an organization that was two years in the making. The Sustainable Iowa Land Trust (SILT) then launched in January 2015 to permanently protect land to grow healthy food. SILT will not only preserve farmland, removing it from development pressure, it will require sustainable agricultural practices to grow food for human consumption in perpetuity, removing it from commodity pressure as well.

Whether SILT owns the land and offers long-term affordable leases or it enforces easements on land that remains privately held, it will reduce the price of farmland for healthy food farmers for generations to come, increase food security for all Iowans and improve soil and water quality throughout the region with good farming practices.

The Sustainable Iowa Land Trust (SILT) comprises two nonprofit entities: a 501(c)3 and a 501(c)2 (in formation). The c3 focuses on education and public outreach. It operates using a nonprofit business model and works to secure grant funding, private financial contributions, and raise funds by presenting events and making appeals. The c2 entity will hold the titles to, and collect the income from, SILT owned farms. It will charge market-based rates for services, such as farm marketing, easement management, and provision of technical assistance to farmers and landowners.

“We invest in SILT because it is a critical player in ensuring that we keep people on diversified agricultural land, which is of utmost importance as we strive for healthy ecological systems in a rapidly changing demographic and economic environment.”

Esther Park,
CEO Cienega Capital

Services

SILT will work toward its mission to protect land to grow healthy food by owning and leasing SILT-owned land and by working with landowners to provide easements that preserve the land for sustainable food production.

Land Ownership

On SILT-owned parcels, the organization will work with qualified farmers to establish long-term, inheritable leases. Leasing the land will enable farmers to minimize their business's debt burden, while allowing them to build equity in the house, the outbuildings, and the farm business. This model is based on proven ground leases developed by Equity Trust.

Enforcing Easements

On easements it holds, SILT will provide management and marketing services and work with interested landowners to lease their land to farmers committed to growing food sustainably. Here SILT is breaking new ground by anticipating the needs these landowners will have and acknowledging that such needs have market value in a fee-for-service relationship. This will help the group defray the ongoing costs of enforcing easements.

Developing Networks

SILT will work with established farm groups and businesses to provide management and marketing services. Recognizing the challenges other nonprofits have faced matching farmers with farmland, it plans to collaborate to develop a web-based national clearinghouse for farmers looking for business opportunities to grow healthy food. SILT will connect these farmers to land owned by SILT or to landowners who have permanent ag easements to grow healthy food. SILT will also provide opportunities for investors and qualified farmers to connect and discuss opportunities to invest in land or equipment for a particular project.

Education and Technical Assistance

SILT will primarily rely on other established nonprofits to provide technical assistance to beginning and experienced farmers and eventually bring some of those services in-house. Land trust farms will become hands-on, real-life educational centers for farmers to learn the latest techniques in sustainable food production from other farmers. All SILT farmers will be encouraged to engage their local community with regular educational events.

Environment and Market

Competitive Landscape

The Sustainable Iowa Land Trust (SILT) is the only conservation land trust in Iowa focusing on protecting agricultural land to grow healthy food.

Other land trusts in Iowa:

- [Iowa Natural Heritage Foundation](#) focuses on natural, rather than the cultivated, landscape.
- [Bur Oak Land Trust](#)—has a geographic (Johnson County area) and a natural areas focus.
- [Whiterock Conservancy](#) - founded by the Garst family, offers trails, meeting facilities, and is performing sustainable farm research on an estimated 5,000 contiguous acres in Western Iowa but has shown no interest in expanding statewide.

Local Foods Interest

As with other areas of the country, Iowa is experiencing increased interest in local foods, particularly by household and commercial consumers in its metro areas. Nationally, local food sales totaled \$6.1 billion in 2012, the latest [USDA data](#). Organic food sales have jumped [72 percent](#) according to the same agency, with Iowa making the Top 10 of states in number

"I seek Community Benefit ROI-- environmental, social, financial, governance and spiritual returns. I invest in SILT because it is a critical model of how farmland can be farmed and managed as sustainable community commons so that people in this country have a hope of eating healthy food."

*Theodosia Hamilton
Ferguson
11-year member, Social Investment Forum
Founding Member,
Slow Money*

of organic farms. According to Iowa's Regional Food Systems Working Group, a statewide network of 15 local food coordinators, farmers reported sales of \$24 million in the 2012-2013 season. Local farmer's markets, restaurateurs, food markets, and schools favor local vendors when possible and patrons are asking for locally raised foods. The University of Northern Iowa started a "Buy Fresh, Buy Local" program in 1997, and now spends 29% of its food budget on locally raised foods. . (Source: Regional Food Systems Working Group (RFSWG) report, 2012-2013, Leopold Center) But SILT is looking beyond local food to a time when food farmers saturate the local market and risk running themselves out of business. SILT plans to partner with food hubs and other regional distribution networks to secure a diversified logistics chain in anticipation of the future needs of our farmers.

Farming in Iowa

According to a recent Iowa State University survey, more than half of Iowa farmland is owned by people over 65, one-third by those over 75. In the next twenty-five years, a huge transfer of land wealth will occur. This fact is not lost on real estate interests that now sponsor "land expos" in Iowa. Although younger people are interested in farming, the high price of land makes this a prohibitive career option. Having the opportunity to lease—rather than purchase—the land necessary for farming will reduce the start-up costs and resulting debt burden associated with farmer. Long-term leases provide the security farmers need to invest in improving the soil and plant perennial crops such as fruit trees. This lowers the barriers to entry for those interested in pursuing food farming as a career while encouraging the best stewardship of the land.

Iowa is losing 25 acres per day to development, according to the American Farmland Trust. Protecting farmland close to population centers reduces food transportation costs and provides farmers with a more robust consumer and commercial market for their products. These neighborhood-friendly small-scale farms offer a diverse landscape that adds value to the homes around them.

Management

SILT's is governed by a board of directors ([Appendix A](#)), all of whom are serving a one-year term. At the end of 2015, the founding board will assign terms of one, two, or three years to each founding board members. Beginning in 2016, a regular board term will last three years. Board members may serve up to two consecutive terms. The board is responsible for governance for both the c2 and the c3 entities.

SILT also regularly avails itself of an extensive advisory council ([Appendix B](#)) that represents almost every Iowa geographic region and aspect of Iowa life, politics and expertise including developers, farmers, leaders from both parties and environmentalists.

Currently, the day-to-day work of the corporation is conducted by the board president, Suzan Erem. SILT anticipates hiring a half-time executive director for the c3 entity in the middle of 2016 and a

half-time land management specialist for the c2 entity in August 2016. The board will directly supervise the executive director, who will then supervise the staff and contractors of both the c2 and the c3 entities.

Three-Year Goals

- **Keep SILT in the public eye** so landowners likely to donate land or easements are aware of the organization. SILT will do this through developing relationships with the media, speaking engagements, and an electronic newsletter. SILT has a website and uses the social media channels of Facebook, Twitter, and YouTube.
- **Inspire confidence and trust** with landowners and farmers through accurate and timely responsiveness to inquiries, and building organizational infrastructure. SILT is already developing its policies and procedures to Land Trust Alliance accreditation level standards. It engages professional advisors to address its legal, marketing, and other organizational needs, and will hire staff as quickly as it is financially prudent.
- **Raise substantial funds, including an endowment**, to show landowners and other supporters that SILT has staying power.
- **Use our assets to build assets.** SILT intends to grow carefully. As the c2 entity grows, it will cover its overhead with land leases and provision of farm services.

Appendix A: SILT Board of Directors

Suzan Erem – President, West Branch, professional writer, organizer, orchardist.

Kate Mendenhall – Vice President, Okoboji, former executive director of the Northeast Organic Farming Association-NY, beginning farmer

Kathy Dice – Treasurer, Wapello, co-owner of Red Fern Farm, nursery-woman and naturalist

Kamyar Eshayan – Secretary, Cedar Falls, director of the Center for Energy and the Environment at University of Northern Iowa, Blackhawk County Planning and Zoning commissioner

Mollie Aronowitz, Des Moines, Conservation land manager for People's Co., Iowa's largest land broker

Paul Durrenberger, West Branch, economic anthropologist, farmland owner.

Melvyn Houser, Council Bluffs, Pottawattamie County supervisor, president of the Iowa State Association of Counties, retired farmer

Sheila Knoploh-Odole, Des Moines, attorney with a Master's in Planning

Dr. Steve Lamer, Solon, D.O. and health expert

Denise O'Brien, Atlantic, farmer and founder of Women, Food and Agriculture Network, former president of the National Family Farm Coalition

Cindy Reed, Solon, RN and executive director of the Iowa Lion's Eye Bank

Bill Stowe, Des Moines, attorney and CEO of Des Moines Waterworks

Wayne Volkl, Cedar Rapids, soils expert, and former FDIC inspector and farmer

APPENDIX B: SILT Advisers

- [Les Beck](#) – Cedar Rapids, head planner Linn County
- Laura Belin – Windsor Heights, philanthropist and political activist
- [Joe Bolckcom](#) – Iowa City, state senator
- Dorrance Brezina – Des Moines, developer
- [Penny Brown Huber](#) – Ames, local food entrepreneur and regional Resource Conservation and Development director
- [Claire Celsi](#) – West Des Moines, public relations professional
- [Ed Cox](#) – Centerville, attorney and ag law expert
- [Cornelia Flora](#) – Ames, rural sociologist, distinguished professor Iowa State University
- [Jan Flora](#) – Ames, rural sociologist
- [Kurt Friese](#) – Iowa City, chef, founder of Iowa's Slow Food movement, publisher of Edible Iowa River Valley
- [LaVon Griffieon](#) – Grimes, founder of 1,000 Friends of Iowa
- [Jason Grimm](#) – Williamsburg, young farmer, local food activist
- [Bob Hartwig](#) – Des Moines, legal counsel Iowa Bankers Association
- [John Ikerd](#) – Fairfield, retired agricultural economist
- [Jeff Jensen](#) – Ft. Dodge, president Iowa Nutgrowers Association
- [Paul Johnson](#) – Decorah, former head of NRCS under Bill Clinton
- [Bobby Kaufmann](#) – Wilton, state representative (R)
- [Jeff Kaufmann](#) – Wilton, county supervisor and chair of IA Republican Party*
- [Fred Kirschenmann](#) – Ames, former director, Leopold Center for Sustainable Agriculture, head of Stone Barns Foundation
- [Erv Klaas](#) – Ames, environmentalist, Soil and Water Conservation District commissioner
- [Lucie Laurian](#) – Iowa City, associate professor of planning, University of Iowa
- [Jean Lloyd Jones](#) – Iowa City, retired state senator, founder 50/50 in 2020
- Ray Meylor – Polk City, community garden activist, service veteran
- [Mary Ellen Miller](#) – Corydon, director 50/50 in 2020, Republican women leader
- [R.J. Moore](#) – Iowa City, retired county planner
- [David Osterberg](#) – Mt. Vernon, founder Iowa Policy Project, former legislator
- [Joe Pietruszynski](#) – Des Moines, developer, VP of Hubbell Realty
- Dick Schwab – Solon, former CFO of NCS-Pearson, philanthropist
- Harn Soper – Emmetsburg, founder Sustainable Farm Partners, organic corn/bean
- [Mary Swander](#) – Ames, poet laureate of Iowa
- [Francis Thicke](#) – Fairfield, owner Radiance Dairy, PhD in soil
- Michele Traver – Cedar Rapids, Thrivent Lutheran Financial advisor
- Tom Wahl – Wapello, nurseryman and co-owner Red Fern Farm
- Paul Willis – Thornton, owner Niman Ranch

*Endorses no organizations in this role

Financials available upon request to info@silt.org.

Harvesting Farmland for the Future

Prepared on behalf of Common Ground USA, Minnesota Chapter

“We abuse land because we regard it as a commodity belonging to us. When we see land as a community to which we belong, we may begin to use it with love and respect.”

– Aldo Leopoldo

INTRODUCTION

The purpose of this report is to analyze a rent-sharing farm trust structure as an alternative to the existing options that currently stifle efforts by beginning, limited-resource and underserved farmers from literally entering the field. As will be discussed in more detail below, a rent-share farm trust would increase the economic accessibility to farmland and promote a different, more communal approach to farming.

This paper gives a general background and introduction into agriculture, an introduction to the financial barriers that face potential farmers, a summary of the existing options for acquiring farmland and concludes with a brief discussion why alternative solutions are needed. Also included is an explanation of the rent-sharing farm trust structure, followed by a legal analysis of issues that may arise if this structure were to be implemented. The last piece of the report gives an analysis as to the legal issues that will be implicated and that will need to be taken into consideration in moving forward with the rent-shared land trust concept. This analysis covers:

1. Securing Land;
2. Trust Law;
3. Agriculture and Business Law; and
4. Lease issues

Within each of these categories there are several subcategories and additional legal, political and social considerations that are important to consider but that are outside of the scope of this paper. If this model is going to be proposed or implemented, more research should be done as to which of those issues might be relevant and require more investigation. Finally, the conclusion will offer recommendations for implementing a land-trust or like concept.

THE AGRIBIGNESS

Minnesota has always played a major role in agriculture.ⁱ A study found that Minnesota ranked 6th in the nation for production of agriculture and 7th in the nation for exports of crops.ⁱⁱ Despite the size of the agriculture industry, the opportunity to participate in the agriculture market has become more and more exclusive in this state and nationwide. This exclusivity is due to the rising costs of farmland that limit entrants to the market. As one report points out, “gaining access to land for beginning and even mid-sized farm operations is becoming increasingly difficult as these farmers compete for land with larger operations, wealthy investors, and the consumption of fertile farmland for development.”ⁱⁱⁱ In a study by National Young Farmer’s Coalition, “land access came up as the No. 2 challenge for farmers who are getting started. According to the study, “it came in right behind not having enough financial capital.”^{iv}

Farmland costs are rising for many reasons. In part costs are driven by the increasing demand for food production, however they are further exacerbated by the expansion of large farms into mega farms. This has been attributed to the current government subsidy system that creates artificial inflation of land prices because “the largest crop operators [are able] to lock in profits and aggressively purchase and rent farmland to expand their operations, driving up land costs beyond the reach of most farmers.”^v Furthermore, “the federal crop insurance makes it difficult for beginning farmers to access sufficient capital since the program limits coverage for producers who have little to no yield history or those who choose to diversify crop production.”^{vi} These large farms have displaced the existence of small farms. This is evidenced by the fact that in Minnesota the average farm size is 332 acres, sizeable.^{vii} And while large farms “have increased abundance and lowered food costs, [they] have also resulted in unintended environmental and health impacts,” among other things.^{viii} At least one relevant and important environmental concern with large farms is the amount of water they require. Their large consumption is alarming as states like California face serious water shortages and agriculture is consuming 80% of those resources. Other effects of large farms are the barrier they create to achieving food security through

small-scale farms, the elimination of equitable access to land, and a stifling force on the role of the community based local food economy.^{ix} As previously mentioned, a pressing issue is that the large farms have limited the possibilities for new small-scale farms to come into force.

THE CASE FOR THE REVIVAL OF SMALL-SCALE FARMING

Small-scale farms are important because their benefits are many. Not only are small farms an “environmental asset due to [their] tendency to preserve biodiversity, reduce land degradation, and conserve forested areas,” they “are also highly beneficial for the social and economic welfare of the communities in which they reside.”^x Studies have shown that revenue from such farms tends to stay in the communities thus leading to improvements in public services and increases in local businesses.^{xi} Moreover, “these communities boast higher rates of employment; this is largely attributed to lower levels of overall mechanization in small-scale agriculture which allow for an increase in manual labor jobs.”^{xii} Increasing understanding of the importance of food security and public health is vital given the public health crisis in the United States and globally. Urban agriculture has been identified frequently as an important part of addressing the food security issue. This is only a glimpse of the benefits of small-scale farms. Even under the limited discussion of their benefits, it goes to show that their importance cannot be understated.

NEW FARM OPTIONS

Currently, there are few alternatives to tip the scales away from corporate agriculture towards a smaller more community based farming model. The process of acquiring farmland has historically been limited to two methods. The ‘traditional’ or commonly known ways to start farming are to rent farmland or to purchase farmland. This means that a potential farmer has to either be creditworthy to purchase the land outright or has to be willing to agree to restrictive lease terms as a renter. Owning and renting have their respective advantages and disadvantages. An owner benefits from the appreciation of the land

value and is detrimented if the land value depreciates. A renter is not able to profit from the appreciation of land but are similarly not necessarily affected by the depreciation of the property. A renter might be restricted to farming a certain type of crop, or only eligible to receive a limited percentage of the crop yield whereas the owner with fee simple absolute holds all the sticks in their bundle and can do as they please.

Other options that could be described as nontraditional farming or land acquisition tend to be those associated with 'urban agriculture.' Urban agriculture is an industry located within or near an urban center which raises, processes and distributes a diversity of food and non-food products serving an urban economic and ecological system.^{xiii} There is no bright line that distinguishes urban agriculture from rural because it is an expansive definition and there is a range of urban agriculture opportunities across commercial and non commercial markets, though Community Gardens tends to be the face of the urban agriculture movement. Some of these opportunities include Community Supported Agriculture (CSAs), farm stands, Community Gardens, and farmers markets. These options tend to gravitate towards leased land rather than outright ownership of land.

FARM TRUSTS

As background, a brief introduction into Community Land Trust (CLT) is important because it is a launching pad for the idea of the farm trust. A CLT is a non-profit organization that provides "lasting community assets [through] permanently affordable housing...[development of] rural and urban agriculture projects," as well as options for land conservation and protection.^{xiv} In a traditional CLT, the trust owns the land but grants an easement on it to the owner of the house. This makes the house more affordable for the purchaser because they are not buying the whole property. Because of the increase in recognition of community benefits, namely the creation of permanent affordable housing CLTs have slowly begun to proliferate across the world.

CLTs have also evolved to include farmland held in trust. There are many different types of these land/farm trust hybrids. For example, “the Chicago City Council created a city-funded entity called NeighborSpace, which is authorized to purchase properties to protect as open spaces, including community gardens. NeighborSpace secures land against potential development, provides basic liability insurance for those using the land, and supports community control of and engagement in local green open spaces.”^{xv} Another example is, “The City of Cleveland and the nonprofit Neighborhood Progress [which] created a competitive vacant land-reuse grant program to empower neighborhood residents and community leaders to turn vacant land into urban farms/ community gardens. Currently, 30 urban pilot projects are creating community and market gardens, orchards, vineyards, and farms. The city also has passed an “urban garden district zoning code.”^{xvi} These kinds of projects provide great starting points and resources for future projects.

RENT-SHARE FARM TRUSTS

The farm trust concept that is analyzed in this paper is different than other existing farm trusts for legal reasons as well as social. Though it is “conceptually similar to Garden Cities and Community Land Trusts (CLTs)” in that the “farm trusts [w]ould have non-contiguous properties in them and wealth/income eligibility requirements for beneficiaries [and] as in a traditional rental situation, the farmer would not have to be credit-worthy, and would not have to take on mortgage debt and thus would run no risk of having “negative equity” if the land’s value drops below a mortgage amount.” It is different because it “as in a traditional ownership situation, the farmer would decide what to do with the land and would accrue a gain from any increase in land value, but over time through the dividend instead of an increased price at time of sale.”^{xvii} Furthermore, whereas the traditional CLTs only charge nominal land rent while maintaining re-sale restrictions, a rent-sharing farm trust would charge full market rent. Though the full market rent sounds counterintuitive since part of the purpose of the rent-share farm trust is to increase economic accessibility to farmland, this issue is remedied because the rent is returned to

the farmers in the form of a dividend distributed equally to each farmer. This is where the CLT concept and the farm trust concept diverge further. In a CLT, the resale restrictions do not allow the owner of the house to benefit off of the appreciation of the land when owner decides to sell the house. In the farm trust concept the entire purpose of the dividend is to allow the farmers to benefit from the increase in value of the land without being the actual owners of the land or having to wait for the sale of the land. In other words, as the land value increases so will the rent and so will the dividend. Herein lies the hybrid of the current rent and buy options.

The ultimate goal of the “rent-sharing farm trusts” is to create an incremental way of increasing more family access to farms while raising awareness of earth-sharing strategies for addressing the issues of land access and growing inequality.”^{xviii} That is, the rent-sharing farm trust wants to get away from the capitalist model of farms where each farmer farms for himself or herself. Thus, each farmer benefits when they all do well and when crop production is not optimal, there is the potential to offset losses.

For reference, below is a table that shows how the dividend process would work.

Ten Farms	Rent/acre	Annual Rent	Dividend (Total rent/10 farms)	Net (Annual rent - Dividend)
Farm 1	300	150,000	93,700	56,300
Farm 2	275	137,000	93,700	43,300
Farm 3	250	125,000	93,700	31,300
Farm 4	225	112,500	93,700	18,800
Farm 5	200	100,000	93,700	6,300
Farm 6	175	87,500	93,700	-6,200
Farm 7	150	75,000	93,700	-18,700
Farm 8	125	62,500	93,700	-31,200
Farm 9	100	50,000	93,700	-43,700
Farm 10	75	37,500	93,700	-56,200
		\$937,000 Total rent		

In the hypothetical chart posted above, there are ten farms that occupy one parcel of land in trust. Each of the ten farms has a different amount of acreage as well as different rent price. The difference in rent is a result of the fact that some of the land is more fertile than others and thus will yield more crops, making it more expensive. Each of the farmers pays their respective rent into the trust, totaling \$937,000 in total rent. The \$937,000 is then divided by the number of farms, (10) and that amount of money is then distributed back to the farmers in the form of a dividend. Regardless of how much was paid into the rent, each farmer will receive the same dividend. This goes directly to the idea that though the farms are considered separate, they are all part of a larger community.

Noticeably, some farmers end up getting a profit once the dividend is returned to them. This is an important concept to understand because it affects the type of legal structure that would control the land, a topic that will be discussed further in the legal considerations section of the paper.

LEGAL CONSIDERATIONS

The major obstacles to new concepts, such as the rent-share farm trust concept, within the larger urban agriculture purview are the existing laws at the state and local level that have not evolved with changing attitudes on farming. This is not to say that there is not the potential for change. Across the country, states and local governments are responding to the demand for flexibility in the approach to agriculture. In a recently published book, *Urban Agriculture: Policy, Law, Strategy, and Implementation*, the authors identify three main categories of state and local laws which are the major areas for reform: “(1) government acquisition of land for urban agriculture purposes; (2) property tax incentives; and (3) changes to municipal codes.”^{xx} The following subsections will explore each of these to varying degrees based on the analysis of applicable Minnesota laws.

Securing Land

Tax Forfeited Land

One of the crucial questions that a potential farmland trust has to consider is where and how the land would be acquired. There are several ways that an organization could go about acquiring land including bequests and gifts. Ultimately, the goal is to pay as little as possible for the farmland in order to maximize the potential of offering the farmland to potential farmers at low or no cost. This section will explore one possibility; acquiring tax-forfeited land for less than market value or as a gift.

Put simply, land is forfeited to the state when taxes are not paid on the property and this land is thus named 'tax-forfeited.'^{xxi} Minnesota Statute Chapter 282 governs tax-forfeited land. Under Minn. Stat. 282, the tax-forfeited land that is not repurchased by the original owners is put up for auction to the general public, corporations and other entities. Before that happens, however, land must be classified as conservation or non-conservation land. Minn. Stat. 282.01 provides a variety of factors that the county board of the county in which the parcel lies must consider when making the classification. One of these considerations is whether the parcel "foster[s] and develop[s] agriculture and other industries in the districts and places best suited to them."^{xxii} When making these classifications, the county board is required to put out notice to invite persons or entities "possessing pertinent information for the classification to make or submit comments and recommendations about the pending classification."^{xxiii} The classification is important because it affects the future sale price of the land of the land. In sum, there are two different ways in which tax-forfeited land may be sold for less than market value and one way that requires no compensation or consideration for the transfer of the property

Conservation land can only be sold for less than market value if it falls into one of three categories, none of which include for agricultural purposes. These categories are "(1) creation or preservation of wetlands; (2) drainage or storage of storm water under a storm water management plan; or (3)

preservation, or restoration and preservation, of the land in its natural state.”^{xxiv} Looking at the plain language of the statute, a farm trust would not fall into any of those categories.

There are two other ways that land can be sold for less than market value. In both of those situations the land must be classified as nonconservation land. First, nonconservation land may be sold for less than market value to “an organized or incorporated governmental subdivision of the state or state agency” if “(1) the county board determines that a sale at a reduced price is in the public interest because a reduced price is necessary to provide an incentive to correct the blighted conditions that make the lands undesirable in the open market, or the reduced price will lead to the development of affordable housing; and (2) the governmental subdivision or state agency has documented its specific plans for correcting the blighted conditions or developing affordable housing, and the specific law or laws that empower it to acquire real property in furtherance of the plans.”^{xxv} Most interesting here is that there is a provision that allows land to be sold if it is going to lead to the development of affordable housing.^{xxvi} While this statute, as it stands, does not also make an exception for developing affordable farmland, it seems reasonable that an amendment to this section of the statute could be proposed to include affordable farmland.

The second way that nonconservation land can be sold for less than market value is when it is used for a public benefit. Currently the named public benefits are roads, parks, trails, public transit facilities, public beaches, civic recreation, and other public service facilities. It is worth noting that this is the only category of tax-forfeited land for which no compensation or consideration is required.

In sum, under the current statute there are only limited ways in which tax-forfeited land may be purchased for less than market value and only one scenario in which the land may be gifted. There is potential in each of the three options to propose a change of language or amendment to the statute to include agricultural uses. Perhaps most promising is the Minn. Stat § 282.01 subd. 1a(d)(1) that recognizes that providing affordable housing is a public benefit. It would be worthwhile to investigate the legislative history for that provision and whether a similar argument could be made for farmland. At least

one question to consider is whether or how to liken farming to housing. That is, there is a strong argument that housing is a fundamental right (though this has not been recognized in law) but it might be politically infeasible to argue this for farming. The inquiry does not end there. Perhaps more problematic and concerning is that the statute specifically states that is the government or the state agency that is able to purchase the land. This is clearly a barrier to a non governmental organization.

Trust Law

The rent-share farm trust would operate under an entity created for the purposes of holding the farmland in trust. The entity would be responsible for seeking out sources of land through public or private donations or purchased for a nominal cost. The land would then be put into a trust that holds the fee simple absolute to the land, unless the land was gifted under different pretenses, such as under a conservation easement.

Under the pretenses that there is land available to be acquired or donated, the question remains of who is in charge of receiving the trusted land. This is a very important consideration for a potential farm trust that will implicate legal, as well as social and political issues. Some of these considerations are:

- Is it more likely that land will be donated to individuals with a specific plan to farm or is it more likely that individuals will be willing to donate land to an established organization that creates a plan to lease the land?
- How do the incentives differ for the donor based on the type of organization that is receiving the land?
- Who holds the trust? Individuals or an organization?
- Who is responsible for seeking out the land?
- If it is a corporate structure that holds the trust, where does the funding come from to staff that organization?
- What does the trust document look like?

Some of these issues are discussed below though this is an area that requires a significant amount of more research. It is worth looking to some of the existing land/farm trust programs that have been implemented in other states as potential sources for guidance when thinking about these issues.

Potential Corporate Structure That Holds the Trust

Farming By Business Organizations

A central issue for a potential farm trust would be deciding the type of entity that would hold the trust. Before that question can be answered, the first inquiry that needed to be made is whether there were any statutory restrictions on the types of organizations that can have an interest in agricultural land. Indeed, the Corporate Farm Act (CFA) generally bars corporations, limited liability companies, pension or investment funds, trusts, and limited partnerships from farming, owning, or leasing farmland in Minnesota.^{xxvii} Basically the CFA says that if you fall into one of those general categories, before the entity starts farming they must complete and send in an application to the Minnesota Department of Agriculture. This provision applies to at least, “all pension or investment funds, corporations, limited partnerships, limited liability companies, and trusts” and requires that they be certified by the Minnesota Department of Agriculture before engaging in farming or having an interest in agricultural land.”^{xxviii} To avoid going through the CFA’s application process, the entity intending to have interest and use agricultural land Non-profit organizations do not fall under the regulatory purview of the CFA. Thus, the next question that needed an answer was whether or there were any statutory limitations on a non-profit organization to engage in the rent-share farm trust model. This is explored further in the following section.

Organization As A Nonprofit

Because of the exemption under the CFA for nonprofit organizations, the first possibility explored is whether a rent-share farm trust could exist under a nonprofit corporation. Federal and state law governs non-profit organizations concurrently. An organization that wishes to seek nonprofit status in Minnesota must incorporate itself according to Minnesota Nonprofit Corporation 317A.^{xxix} If the non-profit is seeking tax-exempt status from the Federal government, it must fall into one of the 28 designated nonprofit categories outlined in chapter 501(c). Though each of the 28 categories of nonprofits are distinct, what remains true for them all is that officers, directors and employees cannot profit off of the operations. The purpose of the farm trust is not to make money, which aligns with the requirement for such classification.

The issue is that under the rent-share farm trust model, the lessees receive dividends from the rent they pay into the trust. This brings up several potential problems for which this paper does not have complete answers to. Those issues are at least these:

- Is the rent that is collected by the trust considered a “profit”?
- How are the lessees classified within the nonprofit?
- Is the dividend that is going back to them a benefit from the profit?
- Does it make a difference if the “dividend” is negotiated into the lease versus paid to the trust and then returned?

Traditionally, a nonprofit organization cannot pay dividends. That is because a dividend to an individual person means that person is benefiting from the profits of the organization, making them in effect a shareholder. Nonprofit organizations cannot have shareholders.^{xxx} These issues must be resolved before determining whether a nonprofit is the appropriate organization for the farm trust.

Public Benefit Corporation

One alternative to the nonprofit structure is the Minnesota Public Benefit Corporation Act. Beginning in early 2015, the Minnesota Public Benefit Corporation Act (MPBCA) allows new organizations to form as

a Public Benefit Corporation. “The MPBCA allows entrepreneurs to create a for-profit entity that is socially-minded. This means businesses can be profitable—paying profits to the shareholders—while still having a social purpose that trumps profits as the chief goal.”^{xxxix} Because the MPBCA allows for profits, the dividends that are distributed to the farmers would not necessarily be an issue as they are for a nonprofit.^{xxxii} Unlike the nonprofit organization however, a Public Benefit Corporation does not have the same tax advantages.^{xxxiii} This means that under a Public Benefit Corporation the profits received would be taxed. The tax issue could be addressed by subtracting however much is owed in tax from the rent collected that would be ultimately be divided up and returned to the farmers in the form of a dividend. Perhaps more problematic than the tax is that “individuals who donate to a Public Benefit Corporation cannot deduct the donation amount as a charitable contribution on their income taxes.”^{xxxiv} This is a potential disincentive for individuals who would want to donate their land to a farm trust because they are unable to deduct the land on their taxes.

Another reason that the MPBCA is interesting option is because, as it stands, it is not included in the CFA. Whether nor not this is intentional or will last is unclear. A formal proposal to the Minnesota Department of Agriculture to exclude public benefit corporations is one option for ensuring that this remains true. The argument that could be made is that like a nonprofit organization the purpose is not profit. It could be reasoned that the purpose of the farm trust is to benefit the public by providing an alternative to the existing methods of securing farmland by making farmland permanently affordable. This option should be explored in more detail as a potential solution to the legal issues that are implicated when dividends are paid.

Agricultural Lease

The Drake University Agricultural Law Center has put together an invaluable resource to consult with on the lease issues that arise in farm leasing. It is much too large of a resource to incorporate all the important considerations with respect with agricultural leases but it would be remiss not to include the

general concepts. These are at least: lease terms, terminations and renewals, method and amounts of rent, contributions to expenses and management of the property, purpose of the agreement (including types of relationships formed), allowed and prohibited uses, conservation provisions, repairs and maintenance, improvements, remedies for default, dispute resolution and transfer of interest.^{xxxv} A special provision could also be included with regards to the dividend that is paid back to farmers from the gross rent of the farm.

Lease issues are going to be very important to setting the foundation for the first rent-share farm trust and for developing a successful project. If the other legal issues can be addressed and resolved to accommodate a rent-share farm trust in Minnesota, creating a model lease and consulting with experts on agricultural leases will be a necessary step in the process.

CONCLUSIONS

Perhaps the most important takeaway from this project is a new perspective that forces farmers and others to view land not an opportunity for individual financial gain but as a community system that benefits when the entire community does better, in spite of individual performances. The rent-share farm trust also has other benefits. It would mitigate some of the financial barriers that new farmers face when considering acquiring land and tip the scales away from corporate farming towards small-scale farms. If the ultimate goal is to move away from a subsidy/tax system, then the rent-share concept is a favorable option. The legal issues are much more convoluted than the concept itself as it touches on many areas, some of which were not even considered in this paper. In sum, the farm trust model's success is necessarily dependent on the acquisition of land, the legal feasibility under the Corporate Farm Act, and the potential legal complications that arise because a dividend system might limit the type of organization that holds the trust. Furthermore, it is crucial that lease terms are firmly established and understood by both the holders of the trust and the lessees to avoid a collapse of the farm. Other issues that were not considered are municipal zoning codes, environmental laws affecting farmland, and other regulatory law.

Ultimately, the legal frameworks for implementing the rent-share farm trust concept already exists, though the puzzle pieces do not fit perfectly together. My recommendation is to do further research in each of the legal areas to fully understand the necessary next steps. In all of the research that I performed for this paper, I found that the most useful tool is one that does not exist yet: a practical guide that can be used as a tool by an individual or organization that wants to actually implement a rent-share farm trust. Initially the purpose of this paper was to identify the legal issues that would need to be addressed in order to implement a rent-share farm trust. As the project progressed it became clear that the scope of those issues was much larger than initially anticipated. It is a promising project but one that is only in its infancy.

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- ⁱ A Look At Minnesota Corporate Agriculture, National Agriculture in the Classroom, available at <https://www.aqclassroom.org/kids/stats/minnesota.pdf>
- ⁱⁱ *Id.*
- ⁱⁱⁱ Ed Cox, *The Landowners Guide to Sustainable Farm Leasing*, Drake University, Chapter 1, 2010, available at <http://sustainablefarmlease.org/2010/09/chapter-i-the-basics/>
- ^{iv} Dan Charles, *Here's How Young Farmers Looking For Land Are Getting Creative*, National Public Radio, December 31, 2013, available at <http://www.npr.org/blogs/thesalt/2013/12/26/257391197/heres-how-young-farmers-looking-for-land-are-getting-creative>
- ^v *Subsidies Waste Public Debt*, Progress, January 31, 2014, available at <http://www.progress.org/news/subsidies-waste-public-debt/us-paid-crop-insurance-enriches-investors-not-farmers/>
- ^{vi} *Id.*
- ^{vii} A Look At Minnesota Corporate Agriculture, National Agriculture in the Classroom, available at <https://www.aqclassroom.org/kids/stats/minnesota.pdf>
- ^{viii} http://www.ci.minneapolis.mn.us/www/groups/public/@cped/documents/webcontent/convert_265422.pdf
- ^{ix} For the purposes of this paper, the definition of a small-scale farm follows the USDA definition which is one that that grosses less than \$250,000 per year.
- ^x <http://www.downtoearthfarming.org/benefits-of-small-scale-agriculture.html>
- ^{xi} *Id.*
- ^{xii} *Id.* citing Logsdon, G. (2011). Small farms create more jobs. *The Contrary Farmer*.
- ^{xiii} Mougeot (2000)
- ^{xiv} See generally Community Land Trust Network, available at <http://cltnetwork.org/faq/>
- ^{xv} Allison Hagey, Solana Rice, Rebecca Flournoy, *Growing Urban Agriculture: Equitable Strategies and Policies for Improving Access to Healthy Food and Revitalizing Communities*, PolicyLink, 2012, at 35, available at http://www.policylink.org/sites/default/files/URBAN_AG_FULLREPORT.PDF
- ^{xvi} *Id.*
- ^{xvii} *Id.*
- ^{xviii} Rich Nymoer, *Rent-Sharing Farm Trusts a Commons Based Way to Aid Family Farming*, January 1, 2012, available at <http://www.progress.org/views/2015-01-12/rent-sharing-farm-trusts-a-commons-based-way>
- ^{xix} *Id.*
- ^{xx} Martha H. Chumblor; Sorell E. Negro; Lawrence E. Bechler, *Urban Agriculture: Policy, Law, Strategy, and Implementation*, 26, ABA Publishing (2015).
- ^{xxi} How land becomes tax-forfeited is outside of the scope of this paper. The question that needs to be answered is; can tax-forfeited land be purchased for a nominal value?
- ^{xxii} Minn. Stat § 282.01 subd. 1.
- ^{xxiii} *Id.* at subd. 3.
- ^{xxiv} *Id.* at subd. 1a(h).
- ^{xxv} *Id.* at subd. 1a(d)§§(1)(2).
- ^{xxvi} *Id.*
- ^{xxvii} Minn. Stat. § 500.24.
- ^{xxviii} Doug Spanier, Minnesota Corporate Farm Report, available at <http://www.mda.state.mn.us/licensing/licensetypes/corpfarmreport.aspx>
- ^{xxix} Minn. Stat. 317A.
- ^{xxx} *Id.*
- ^{xxxi} Aaron Hall, *Minnesota Public Benefit Corporations FAQs*, Thomson Hall, available at <http://thompsonhall.com/public-benefit-corporations-become-law-in-minnesota/>
- ^{xxxii} *Id.*
- ^{xxxiii} *Id.*
- ^{xxxiv} *Id.*
- ^{xxxv} Ed Cox, *The Landowners Guide to Sustainable Farm Leasing*, Drake University, Chapter 1, 2010, available at <http://sustainablefarmlease.org/the-landowners-guide-to-sustainable-farm-leases/>

RENT-SHARING FARM TRUSTS – A commons-based approach to farming

- Similar to a Community Land Trust (e.g. non-contiguous farms, non-profit, eligibility requirements, etc.) but member farmers pay full market rent for their farm’s land to the trust from which each receives equal payment in the form of a rent credit.
- Donated farm land is used to start the trust but more land could be added to it in other ways, e.g. tax forfeiture, bequest, purchase, etc.

HYPOTHETICAL EXAMPLE FOR MINNESOTA

(Rents are averaged by MN Region based on University of Minnesota data)

Farm	Rent/acre	Acreage	Annual Rent	Rent Credit (50% of Rental fund/8 farms)	Annual Net Rent
Southeast	\$212	5	\$1060	\$1,296	(\$236)
South Central	\$227	10	\$2270	\$1,296	\$974
Southwest	\$199	15	\$2985	\$1,296	\$1,689
East Central	\$64	20	\$1280	\$1,296	(\$16)
Central	\$150	25	\$3750	\$1,296	\$2,454
West Central	\$157	30	\$4710	\$1,296	\$3,414
North Central	\$24	35	\$840	\$1,296	(\$456)
Northwest	\$96	40	\$3840	\$1,296	\$2,544
			Rental fund - \$20, 735		

AN OPTION BETWEEN RENTAL AND TRADITIONAL FARM OWNERSHIP

RENTAL FEATURES	<ul style="list-style-type: none"> • No mortgage debt for land <ul style="list-style-type: none"> ○ Easier access to land ○ No risk of “negative equity”
OWNERSHIP FEATURES	<ul style="list-style-type: none"> • Farmer accrues gain from any increase in land value, but over time through rent-sharing instead of at time of sale • Farmer decides what to do with the land (subject to terms of the trust) • Farmer has title to any buildings on the land and is responsible for their maintenance
UNIQUE FEATURES	<ul style="list-style-type: none"> • Rent-sharing lowers net rent and/or helps fund farm operations/living expenses • Reflects a “commons-based” approach