Farmland Lease & Purchase Workshop

Zenger Farm, Urban Grange
Wednesday, November 2, 2016

Agenda

- 4:30-4:50 attendee introductions and brief descriptions of what you're hoping to learn or where you're at in your search for land
- 4:50-5:20 Bill Triest, Real Estate Agent at Keller Williams - getting your ducks in a row to purchase a realistic parcel suited to your operation and how to search for the property
- 5:20-5:45 Nellie McAdams, Farm Preservation Program Director at Rogue Farm Corps - considerations for land leases and creative ways to find land and gain land tenure
- 5:45-6:00 Leah Rodgers, Farmer at Rockwood Urban Farm - buying and renting urban farmland
- 6:00-6:15 Greg Malinowski, Malinowski Family Farm - a landlord's perspective on leasing land to beginning urban farmers
- 6:15-6:30 Molly Notorianni, Next Generation Organizer at Friends of Family Farmers - accessing land and opportunities through Oregon Farm Link
- 6:30-7:00 Q&A and discussion

This packet contains

- Farmland Search: A Suitable Farm, by Bill Triest. 3 pages
- The Flow of Real Estate Transactions, 1 page
- Finding Farm Property, by Keldah Hedstrom, 6 pages
- Creative Options for Finding Land and Gaining Land Tenure, by Nellie McAdams, Rogue Farm Corps, 2 pages.
- Recent land opportunities, 1 page
- Land Leasing, by Nellie McAdams, 4 pages
- Malinowski Gardens Basic Farm Lease, 2017, by Greg Malinowski, 2 pages
Farmland Search: A Suitable Farm

INTRODUCTION:

You don’t have to own or even lease farmland to begin farming. It may be thought of as a process of perhaps gaining farming experience by working on a farm, then leasing farm ground and then, if it is a good fit, buying a farm. Each step will have its own entry costs and benefits but Rome wasn’t built in a day. Let’s look at what might be in store.

1. CLARITY:
   Questions you should ask:
   
   . what is your desired farming venture?
   . what can you afford and what credit do you qualify for? Lining up your financing
   . what is your business plan?
   . what will be your market niche?
   . will you diversify with different target markets and or crops/livestock?
   . what are your income goals; supplemental, half or total?
   . what is your time commitment?
   . will the farm be your residence or not?
   . what are your requirements as to infrastructure as barns, shop, or fencing?
   . how important are quality soils, terrain and water rights?
   . how important is distance to markets, supplies and labor source?
   . what are your requirements as to schools, neighbors, town, or city amenities?

   Review:

   Identifying farm goals
   Financing availability and limits
   Distance tolerance to markets etc.
   Farm basics, soils, water, heat units
   Your must haves:
   Your deal breakers:

   KEY: When purchasing land, choose carefully, you are making a very large financial and lengthy time commitment. Get it as “right” as you can.

2. SEARCH:

   HOMEWORK: Begins with you, your computer, engagement with the farm community and your car.
   . get to know what’s out there via on-line sources e.g. RMLS, Zillow, Craigslist, etc. (below)
   . Realtor, yes or no?
     Yes (benefits)
     ACCESS: greater access to properties, pocket listings, realtor & farming contacts
     KNOWLEDGE: knowledge of market, pricing, trends and communities
     ANALYSIS: analyzing property for meeting your objective(s) and infrastructure
     NEGOTIATION: negotiating with the listing agent, part trench work, part politics and lots of social acuity and, seller pays the commission
Farmland Search: A Suitable Farm

No (benefits of not using a realtor)

**PRICING:** may be able to negotiate the price down by working with the listing agent or seller directly.

**RELATIONSHIP:** but this can work both ways.

**CONTROL:** this may provide comfort directly handling all aspects.

**VETTING YOUR REALTOR:**
Ask the realtor:
- What is your background in agriculture?
- How committed are you in helping me with my search?
- Have you sold farm property before?
- How familiar are you with soils, water rights, neighborhoods, farming community?
Ask yourself: What is my gut telling me about this realtor, would they be easy to work with?

**KEY:** You don’t have to utilize a Buyer’s Agent but it might expand your toolbox. Today with online search methods. finding a property is not necessarily the top use for a realtor. They will be your control center for access, knowledge, analyzing, negotiation and crossing the finish line.

**3. TOOLS YOU WILL USE:**
**To find land**
- Multiple Listing Services (MLS): RMLS and WVMLS
- Zillow, Trulia, Redfin, etc.
- Craigslist
- Capital Press
- Various crop commission meetings
- OSU Small Farms Program events
- Farm supply stores
- Implement dealers
- Farmer’s markets, chefs.
- Visiting prospective areas and walking the beat.

**To analyze the property**
- NRCS, soils and soils mapping
- Watermaster and Oregon Water Resources Department
- OSU Extension

**VETTING THE COMMUNITY**
Ask community members you meet:
- Tell me about your community.
- Tell me about your schools.
- How friendly is the community?
- Do you know anyone thinking of selling?
- Who else should we speak with?
Farmland Search: A Suitable Farm

Review:

Searching for your farm can be with or without a realtor, but with a complicated transaction at no cost to you as a buyer you may be better served with a Buyer’s Agent. Regardless you will still have a “team” composed of you, (realtor or not), mortgage broker, appraiser, home inspector, title company and escrow officer. Your time frame from the beginning of your search can run from several months to several years.

KEY: Don’t despair! If you are not already well versed in your farming goals, search methods and the real estate transaction process you will get there. But, opportunity rewards the prepared.

SOME LAST THOUGHTS:

Be open to different farming areas that can serve your needs.

Be flexible with having a home or not.

Realize that Willamette Valley, (and Portland Metro), land and housing is very high and, in all likelihood, will remain on an upward trajectory over time.

Recognize that to do this job well, effort and patience will be required from you along with your team or allies and;

Be prepared, for the process start to finish will in all likelihood take considerable time.

Recognize that organic, sustainable and local are now baseline for small farmers, and for survival and profitability you must develop superior products, adept marketing and a market niche.

I have been growing and selling farm products for over a half century and never have I seen such great opportunities for the small farmer. Consider your mainstream supermarket and the growing inclusion of quality produce. Or our growing upscale grocery stores, farmer’s markets, unique farm products, value added or not as well as restaurants clamoring for specialty farm foods. Profit margins have opened up this plays to your advantage. And, the growing awareness of supporting local food production.

Onward!
The Flow of Real Estate Transactions

**Seller**
- Agent Presents Comparable Sales/Market Analysis
- Price is Established
- Listing Agreement with Agent
- Multiple Listing
- Open Houses (General Public/Broker)
- Showings by Appointment
- Advertising

**Buyer**
- Initial Contact
- Commitment to Agent
- Financial Qualifications
- Market Education
- View Property
- Write Offer with Agent

- Purchase Offer Presented to Seller
  - Negotiation of Terms
    - Seller
    - Agent
    - Buyer

- Accepted Sales Contract
  - Open Escrow
    - Deposit Earnest Money
  - Disclosure
    - Inspections
  - Title Search
    - Preliminary Title Report
  - Additional Negotiations, if necessary
    - Seller
    - Agent
    - Buyer

- Obtain Necessary Property Inspections
  - Inspections & Conditions Removal; Increase Deposit
  - Loan Process 10± days
  - Loan Condition Removal 20± days

- Closing Procedures
  - Receive Cash Proceeds, Rent Back or Move
  - Loan Funding
    - Title Records at City Hall
    - Utilities off/on

- Got Keys “Moving In!”
OSU Small Farms - Finding Farm Property - By Keldah Hedstrom

1. START HERE: Determine your Goals & Expectations - Figure out what you can or cannot live without!
   a. What do you want to produce?
      i. Livestock
      ii. Row crops or Vegetables
      iii. Orchards
      iv. Berries, etc.
   b. What's your Farm budget?
   c. Where do you want it to be?
      i. In a specific area or region?
      ii. In a specific neighborhood/location?
      iii. In a specific distance to your Market?
   d. What size do you need? Small 10ac – 50ac, Mid 50 – 100 ac, Large 100+ac?
   e. Amenities – What does it need to have to fit your goals?
      i. Home
      ii. Infrastructure - barn, sheds, roads, irrigation on the property?
      iii. Equipment?
      iv. Near or on a water feature (pond, creak, river)?
   f. In the end, you will be searching for:
      i. Specific Location, flexible produce (whatever fits the area)
      ii. Specific produce, flexible location (whatever fits needs of produce)
      iii. Speculative/Investment – Find out what leases go for in different areas for different produce.
      iv. Specific Location, specific produce (can be hard/long process sometimes)
   v. What can you live without or NOT live without?
   vi. Recommend OSU Growing Farms program to help you with these questions!

2. Initial Property Search – Use this to narrow down potential properties by your goals. You should have done enough research to know that x crop needs x soils and x climate and these needs can be met in x area, etc. When you search, you will collect lots of information about each property. You will want to file or organize this information so you can quickly find it again if any questions come up about the potential property.
   a. Start with Online Search Tools – Easy and Fast to get a feel for what is for sale and where. Use this to help gauge your goals, i.e. what adjustments might I have to make to find what fits my goals?
      i. RMLS – Regional Multiple Listing Service (www.rmls.com)
      ii. WVMLS – Willamette Valley Multiple Listing Service (http://wvmls.com)
      iii. Realtor Boards or Associations also have gateways to Multiple Listing Services as well as tips on searching. For example, Southern Oregon (http://roguevalleyrealtors.org/). Try searching both Farms/Ranches and Residential with Acreage as sometimes properties are categorized into both types.
      iv. Craigslist – Good “For Sale By Owner” site (www.craigslist.com). There are other online FSBO sites as well, but sometimes you have to just drive around to find them.
   v. Zillow.com, Realtor.com, Trulia.com – Search by map can help get a visual of what is for sale in a specific area.

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vi. iFarm – Friends of Family Farmers has a Farmer to Landowner Connection program where people list farm land for lease or sale (http://www.friendsoffamilyfarmers.org).

b. In Person Research – Get out and tell people and ask around for what you are looking for! You will be surprised how things can sometimes ‘pop up’ from someone out of the blue that heard you were looking for x.
   i. Driving Around the area you are interested in – Look for “For Sale” signs and get a feel for the neighborhood/area. Talk to people in the area.
   ii. Community Research - Local meeting places such as restaurants, tractor or feed stores, irrigation stores, etc. & Farmer’s Markets, local clubs like 4-H or FFA.
   iii. Networking – Investors are starting to look more into ag properties so this might be an avenue to find a partner and/or a way to get into a property initially. I work with investors now that are looking for farming partners.

3. In Depth Land Research – Once you have really narrowed down your search by the initial online and in person search, you can get into the gritty details of the few properties you are really interested in. Once you do this a few times it will get much easier, especially if you establish good working relationships with the groups that can provide you this information.
   a. GIS Mapping – Geographic Information Systems (GIS) maps can tell us quite about a property and are used by every entity below to provide this spatial information to the public. The power of GIS is in the merging of on the ground (spatial) location with information about that location. This allows us to query data about a specific location on earth at light speed!
   b. County Resources – Check the County Mapping department because they will have online maps that you can use to find out important info about a specific property. When buying rural property, the County usually will dictate what your options are for what you can do with that property. I encourage you to go in and meet with County planners as they are usually willing to help and know a lot about their areas.
      i. Example County Sites: Benton (http://www.co.benton.or.us), Linn (http://www.co.linn.or.us/), Marion (http://www.co.marion.or.us/), Polk (http://www.co.polk.or.us/), Lane (http://www.lanecounty.org/)
      ii. Assessor – Taxes & Appraisals. Check to see what tax lots make up the property, what the taxes are (some counties more expensive than others), if they are paid up to date, and the most recent assessment of the property. Make sure to ask about the tax lots. Just because a property has several tax lots does not mean they can be sold or broken up.
      iii. County Planner – Landuse & Zoning. Here is where you find out what you can potentially do with the property! Don’t be shy about asking them about exactly what you would like to do. Being pro-active in the beginning can save you some heartache in the end!
      iv. Clerk & Recorder – Deed History
   c. Water – Water is essential for most farming operations. The Oregon Department of Water Resources (ODWR) is the authority on anything water quantity. (Water quality is regulated by the Department of Environmental Quality.) The ODWR website (http://www.oregon.gov/owrd/Pages/index.aspx) has a wealth of info on understanding, searching, and obtaining Water Rights & Well information.
      i. Water Rights

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1. The state owns the water so a Water Right is required for any commercial irrigation of land (i.e. any land you are going to sell anything from).

2. Water Rights are required for watering anything over ½ acres around a home as well as stock watering from ponds. ODWR Water Rights Mapping Tool (http://apps.wrd.state.or.us/apps/gis/wr/Default.htm)

3. Water Rights stay with the property and not the person owning the property. A Water Right Permit or Certificate is the official record and can be viewed on the ODWR website. This will tell you water place of use, point of diversion, when it can be used, and how much can be used on that property. It is a good idea to look this up right at the beginning so you know where the water should be being applied as often water is not being applied where it should be.

4. Water Right regulation is complaint driven but if you are found abusing these rights they can be removed and you can be fined.

   ii. Well Logs – ODWR has an online searchable database of all the wells drilled (legally) in Oregon. It is a good idea to pull up the log for the property you are researching as it can tell you how deep it is, what type of soil it is in, the flow, etc.

   iii. How do I find out if a Property has Water Rights? Go to the following ODWR web page, it is a great starting point! http://www.oregon.gov/owrd/Pages/wr/property_wr_info.aspx

d. Soils – The backbone of farming. Different soils and DRAINAGE are needed for different crops. It’s important to ask about drainage. Does the property currently have drain tiles or some other drainage mechanism? Location and soil type will often indicate if drainage is needed.

   i. NRCS is the Authority on Soils. Use their online soil mapping tool the Web Soil Survey (http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm) to find out what soils are on the property you are interested in. The Soil Data Explorer tab provides a lot of information such as crop productivity index (i.e. tons/ac of certain crops in a specific soil type), compaction, drainage, etc.

   ii. Soil Testing - Very important to do this after purchasing a property, unless you can get this information from the current owner or realtor. Local Crop and Soil Consultants are also great resources as chances are they have been to the farm and have conducted previous soil sampling and might have refined soil and nutrient maps or have knowledge of the area and can tell you how the soils behave.

   iii. For Do-it-yourself types, OSU has good publications on how to conduct Soil Sampling:

   1. http://smallfarms.oregonstate.edu/soil-testing

e. Land Surveys – It is a good idea to find out if a property has been surveyed (the more recent the better) so that you know exactly where the property boundaries are. You can ask the owner or realtor if they have any knowledge of one or you can ask a local surveying company if they can check the county history to see if one exists. If you get to the point in which you want to put an offer in on a property, a current survey becomes much more important.
f. Aerial photos – Aerial photos or imagery provide a wealth of information about a property. From them you can determine field boundaries & acreage estimates, changes in soil types, plant vigor & vegetation abundance, cropping patterns, junk yards, etc.
   i. History – Old aerial photos can tell you a wealth of info about a property. They can show you old stream channels, gravel pits, previous vegetation, field swales, etc. You can find various years of imagery online, at the Farm Service Agency (FSA) & NRCS, as well as at some Soil and Water Conservation Districts (SWCD). These are great places to find out history of an area or a specific property.

 g. Additional Map and GIS Data sources – There is a lot of free GIS data out there that can be used to help you to better understand the property and area you are interested in. The Oregon GIS Data Warehouse (http://gis.oregon.gov/DAS/EISPD/GEO/pages/alphalist.aspx) has a ton of data:
   i. Hazards & Geology – Flooding etc. (See also - http://oe.oregonexplorer.info/hazards/HazardsReporter/)
   ii. Topography – Lidar mapping with 1ft elevations! (See also - http://nationalmap.gov/ustopo/index.html)
   iii. Market Analysis (Census data, etc.)
   iv. Urban Growth Boundaries (Affect Zoning!)
   v. Groundwater Restricted Areas (no new water rights and restricted water use)
   vi. Fire & Forest
   vii. Fish locations (This affects water rights and water quality requirements!)

 4. Working With a Realtor (This section adapted from Conner Voss’s Handout “Family Farm Real Estate”). This section outlines some of the things to think about when working with a listing agent (agent listing the property you are interested in) or finding a realtor to work for you.
   a. Real Estate Agency Relationships
      i. Seller Agent – Agent that works exclusively for the seller to sell their property.
      ii. Buyer Agent – Agent that works exclusively for the buyer to find a property and to help them to put in an offer to purchase the property.
      iii. Disclosed Limited Agent - Represents both the buyer and seller, or multiple buyers who want to purchase the same property. This can be done only with the written permission of all clients (parties). Some realtors think it is impossible to provide the best service to both clients, so they will not represent both parties. Some feel that removing an extra party from the transaction actually makes it smoother as communication is directly with both parties.
      iv. Agency relationship is acknowledged at the time an offer is made so it is important to decide which relationship you want to be in before the offer is made.
      v. Different relationships work better for different situations. The more complicated the property, the more careful you should be in considering the relationship to engage in.
Tips for working with a realtor:

vi. Generally if a property is listed, will need an agent present to visit the property.

vii. The clearer you are with your expectations, the more help you will get.

viii. You can represent yourself but make sure to have real-estate lawyer help you with contract language and provide guidance. Be prepared to do a lot of research and you will need to advocate for yourself at all times because no one else will be doing that for you!

ix. By law, agents must disclose material facts that are known to them

x. Don’t let any agent push you into anything you are not ready for.

b. Finding out the Listing Agents knowledge of the property and Questions to ask about the property.

This is where you find out if the listing agent is competent and able to answer questions about the property as well as get a general feel for the situation. Are the sellers motivated? Is it an emotionally charged situation? Is the property cared for or in a state of disrepair? Why are they selling? Is the property in an estate and if so, how many members are involved? What’s the seller’s timeline?

i. Example list of additional questions to ask:

1. Is there Water on the property – pond, spring, and creek and are there rights to the water features? If not, are there any water rights? Any well or water source tests or history of issues like ecoli or high nitrates levels? (Currently the Central to South Willamette Valley is classified as having high nitrates so something to think about) Note: Many realtors and landowners do not know that you can only irrigate up to a ½ acre from your well for residential purposes only!

2. Is there a current farm or land appraisal in the last 5 years and if so, can it be shared?

3. What is the history of the property - How is and has the property been used? Any currently existing leases?

4. How productive are the soils? Any yield information or can I have permission to get it from the FSA or crop consultant?

5. Do you know about any mineral rights and do these rights convey to the buyer?

6. What is zoning of the property & tax status? Any issues with the county?

7. Any environmental issues with the property? Flooding?

8. Is the property surveyed? Any easements or encumbrances on the property?

9. Any issues in obtaining title insurance, i.e. is the property title clear?

10. What, if any, infrastructure exists on the property? Fences, buried mainline, out buildings, roads, etc. and any issues with any of the infrastructure? What shape is it in and has any maintenance been done to it?

11. Any additional land uses or leases – hunting, conservation easements, etc?

12. How long has the property been on the market and has the price changed at all?

13. Is there a home or any dwellings on the property, what is their condition, and are they permitted?

14. Will sellers consider an owner contract and if so, what are the terms?

15. Any equipment or implements included with the property?

c. Visiting the Property & Things to look for – If possible get pictures and or visit the area in winter!

i. Field conditions - Erosion, standing water, low spots, steep slopes, etc.
ii. Inspect infrastructure – barns, fences, sheds, roads, culverts, ditches, etc.

iii. Inspect irrigation infrastructure – mainline, pumps, wells, power sources, water draw locations (if river or creak), etc.

iv. Weed pressure – Are the fields & fence lines clean of weeds? Any issues with neighbor fields being weedy?

v. What is the current crop system and does it involve rotations?

vi. Soil condition – compaction (hard pan layer present?), all sand, all clay, organic matter present?

vii. Equipment or implements – What is the shape/condition of equipment? Deferred maintenance can become costly quickly.

viii. Environmental Issues – Any lagoons, fuel tanks, trash, chemicals, dump sites, etc. located on the property? These can be costly to clean up and can require permits etc. from DEQ.

ix. Water quality & quantity (if water is present) – Do livestock have access to the water? Are there low flows in summer or possible upstream pollution issues such as high sediment content? Is anything on or near the property fish bearing (this will greatly restrict things you can do in and around this)?

x. Accessibility - Is the road big enough for equipment and will it be difficult with traffic to get in and out? How far is it to town and potential markets?

xi. Neighbors – Does the current owner have good relationships with their neighbors? Is there a lot of noise (barking dogs, aircraft, traffic, etc.) and what is the activity level of the area?

Thank you for your time. Contact me any time with questions!
Creative Options for Finding Land and Gaining Land Tenure


Finding Land
Cast your line where there’s fish. Go to where the landowners are. Approach existing farmers who have spare land to farm. See Even Pull Farm in Newberg.

- **Newspapers**
  - Post an ad in the Capital Press or the local newspaper in the area where you are searching.
  - Farmers and agricultural landowner tend to read newsprint more than follow social media, so this might be an effective option. Stress the mission of your business, your experience and existing markets, and your passion.
- **Feed Stores** – put up a flier at Burns Feed & Seed, Linton Feed & Seed, Naomi’s, or other farm stores that serve farmers and landowners in your target area.
- **Granges** – Mary’s River Grange in Corvallis has strong beginning and aging farmer populations. The Corbett Grange is also strong and growing. Announce your intention to find land during introductions.
- **Farmer Association Meetings** – Consider attending farm association meetings where farmers have farmland, even if you do not practice the same type of agriculture. This might include local chapters where you are searching for land for the Oregon Farm Bureau, Oregon Nursery Association, and meetings of Oregon Boards and Commissions.
- **Churches** – Afton Field Farms found their first farm property through fellow church members who had land and were supportive of their farm enterprise. The lease was beneficial, with no mortgage payments for the first five years.
- **Internship** – FarmsNOW farmers Justin and Teagan Moran found their farm through connections they built at Rogue Farm Corps’ second year apprentice program.
- **Online Clearinghouses**
  - **Oregon Farm Link** – Oregon’s only agricultural landlink service.
  - **LandsofAmerica.com** – largest rural listing service in the US specializing in land for sale
  - **LoopNet** is a national search engine that allows you to search for farmland real estate listings in any part of the country.
  - **LandandFarm.com** lists farmland for sale.
  - **Shared Earth** helps link farmers and gardeners looking for land, with people looking to share their land.
  - **AgriSeek** allows you to search farms for sale by category and location.
  - Mother Earth News lists farms and rural properties at their [Lands for Sale](#) page.
  - **Landsale Listings** is a website with lots of information about rural land, farms, ranches and more.
  - Rodale Institute’s [Farmers Connect](#) forum replaces their former ‘classifieds’ page.
Acquiring Land Tenure

- **Farm Incubator** -
  - Headwaters Farm Incubator, East Multnomah SWCD
  - Yamhill SWCD is considering one

- **Institutions dedicated to local farming** – Meriwether’s Restaurant owns Skyline Farm, which provides the restaurant with produce. Consider contacting restaurants, hospitals, cities, schools, and other institutions that have access to or capital to fund the purchase of land to support your operation. This provides you with an automatic market as well.

- **Partnership with landowner** - like New Zealand’s “Share Milk” program farmer supplies cows and partner may provide infrastructure.

- **Trade lease payments for stewardship of the land under NRCS contract** – If the landowner agrees to and is granted funding for a Conservation Stewardship Program or Conservation Reserve Program project, the tenant may steward the land for ecological benefits in exchange for the financial benefit the landowner receives from NRCS.

- **Start with a lease with option to purchase** – give yourself and the landowner exit strategies. Have an option to renew the lease.

- **Connect with landowners AND financers** who can purchase the property. It might be beneficial to have a financer purchase the property, possibly convey an easement, and carry an owner-financed mortgage with beneficial financing terms. Financers with significant tax liability may be able to donate an easement to a local land trust or SWCD for charitable tax credit. This would lower your purchase price and permanently protect the land from development.
  - To find institutional financers, see:
    - FSA & NW Farm Credit Services – especially the AgVision program for BFRs
    - Craft3
    - KIVA Zip
  - To find individual financers, see:
    - Slow Money Northwest – largely inactive since 2015
    - Salem Sharks and other angel investor forums
    - Oregon’s Community Public Offering – advertise to CSA members
    - Wealthy friends and family who are interested in divesting some of their income from the stock market. Consider a house party to pitch your financing idea. Come prepared with a business plan.
  - Business planning – A business plan is usually required for financing. Reach out to SCORE or the Oregon Small Business Development Center for assistance.

- **New Markets Tax Credit** administered by Business Oregon. For land/business purchases between $4 and $8 million in low-income rural areas

- **Collective Models of Land Ownership**- owned, governed, and operated for members
  - For marketing, land ownership, equipment, labor, and more
  - Ten Rivers Food Web in Corvallis has launched a Community Food Land Trust which will purchase land and make it available via long term lease or purchase to BFRs
  - North Fork 53 and the Nehalem Valley Farm Trust is considering purchasing farmland on the North Coast and making it available for cooperative farming.
  - Contact Northwest Cooperative Development Center for support and the Greenhorns’ online guide. Consider a Value Added Producers Grant.
Opportunities

We have 22 acres West of Salem and like to rent out parts of our agricultural section to beginning farmers to help them learn, decide if this is something they want to pursue as well as network with a bunch of other folks with eclectic skills. We offer a room to live in as well during their time with us as well.

Sara
913-205-5879
www.turningearthfarms.org

We are one of the families in Clackamas County that embodies the farm family transitions that are mentioned in the article. My wife’s family has had a farm in Wilsonville for 3 generations. We are looking for someone who is interested in a long term agreement or partnership to increase the productivity of our farm.

Michael Perelli-Minetti mikesfarm5821@gmail.com

This is our property in Carlton, a roadside view. Exact location is 714 E. Main St Carlton, OR 97111. Under 2 acres. Behind is the winery Carlo and Julian (you can imagine the beauty of vineyard).

The goal of the internship, in exchange for all the fruits available now for harvest as well as the opportunity to design a business plan (with course credit), is to be able to first and foremost clear the brush around the property in preparation for spring planting/farming season.

He is open to as many possibilities out there and hopefully gain partnerships with communities that adhere to the philosophies of natural agriculture and environment conversation, with good food production within the context of a small scale farm and wine business (the proposal can design a partnership too with the vineyard next door).

Contact Information:
Gary Estanislaio at garyestan@gmail.com
Eduardo DelRosario at Eduardo.delrosario@nyumc.org

We got a call today from a lovely elderly woman who has a small, 12 acre piece of farmland (currently in hay) just off of HW 58 near the feed store in Pleasant Hill. She is interested in selling it, but, she would like for it to remain a farm and not see it turned into more homes. This sort of a request is not something that works for us for a CE or to purchase. I mentioned that she could look into farm deferral options with the County and a deed restriction before she sells it and she was interested in pursuing those options. I was wondering if you might know of how to get this sort of an opportunity out in the farming community to folks who may be interested? It seems like it could be a win-win if she wants to sell it to a farmer and she is willing to even lower the value to ensure that it can be farmed.

Alayna DuPont, Land Protection Manager
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Land Leasing

Steps for Leasing Agricultural Land
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I. General Considerations in Crafting Land Contracts
   - **Management**: How to share control over the land and the farming operation? Daily/strategic decisions? Property maintenance?
   - **Farming Philosophy**: Certified organic? Pesticide-free? Soil conservation? Crop rotations?
   - **Estate Planning**: Consult an attorney about tax consequences. Consider selling or donating a conservation easement. Consider giving the tenant the option to purchase the land.
   - **Personality**: Take precautions and consult an attorney before signing, no matter who your tenant is. Relations between family & friends often change over time when money is involved. Consider prohibiting drugs, tobacco and/or alcohol on site.

II. Some Methods for Getting Farmers on Land
1. **Leases**
   - What's included? Boundaries? Housing? Housing in a separate lease?
   - Setting rent payments
     - **Fixed Cost**: Rent is a set cash amount, paid on a schedule
     - **Crop-share**: Rent is a share of the actual crop, not just the gross. Landlords usually contribute more work, making IRS “self-employed” status more likely.
     - **Variable cost**: Cash payment is calculated as a percentage of gross. Set floor and ceiling.
   - Specify if you wish to adjust the rent for uncontrollable risks affecting yield or market value.
2. These two provisions are common when one or both parties are interested in negotiating a sale, but not at this time. The agreement should limit the maximum sale price vis-à-vis the Fair Market Value at time of sale. Tenant should be credited for improvements or advanced payments before the sale.
   - **Right of First Refusal - The landowner** chooses time of sale
   - **Option to Purchase - The buyer** chooses time of sale.
4. **Lease-to-Own** or Reverse Mortgage - Have an attorney carefully draft this. Money the buyer has paid might become taxable at time of signing. Payments are a combo of lease and mortgage pre-payment.
5. **Partnership/Investor**
   - Usually, the landholder provides the property and infrastructure, while the farming partner provides “sweat equity” of labor and some or all management.
   - The parties may contract to increase the farmer partner's responsibilities and rewards over time, so that the farmer's role gradually shifts from near-employee, to owner/operator.
6. **Creative/Barter** - The value of bartered goods is taxable income.

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III. Before Entering a Land Contract

- **Personal Track-Record**
  - **Landlord**: Check the tenant’s credentials, including: experience, references, business plan, credit report. Consider taking a deposit.
  - **Tenants**: Ask the landlord for references from prior tenants.
- **Check county records** for existing leases/easements, access routes, zoning, and permits
- **Talk with neighbors** about seasonal changes to land and climate, weed pressure, dust
- **Establish a baseline for the condition of the property** that can be referred to at the termination of the lease. Both parties should walk-through the land & buildings and agree to overall condition of housing, infrastructure, and soil, water supply, etc.
  - If the parties cannot agree on the property’s condition, they should agree on an independent third party to do this.
  - **Create a document describing these conditions in detail and have both parties sign and date it!**

IV. Three Considerations for Land All Contracts

1. **Get it in writing and signed, including modifications**
   - **Statute of Frauds**: For a contract for real estate to last more than one year, it must be in writing and signed by the person against whom enforcement is sought.
   - Both parties should sign and date.
2. **Get an attorney’s opinion.**
   - If a lawyer doesn’t draft the lease, at least have a lawyer review it before signing.
   - Read all contracts and amendments thoroughly.
   - Don’t sign it if you don’t agree with it. Negotiate any terms that are negotiable.
3. **Record with the County Clerk**
   - This provides notice to other lessees, subsequent owners & banks.
   - Must be notarized. You can just submit a “Memorandum of the Lease”
   - Do this especially if there is a right of first refusal, option to purchase, or lease-to-own

Terms of a Land Contract

1. **Identify the Parties**: Name, address, phone.
2. **Describe the Property** as clearly as you can, especially lease-to-own, including:
   - Acreage, borders, landmarks, fences, facilities/infrastructure, access routes, equipment
   - Name any property or buildings that are excluded from the lease.
   - Mention all easements (including conservation easements) and co-existing leases.
3. **Lease Term (Duration)** - State the starting/ending dates, as well as the number of years.
   - **1-2 Years**: Landlords with such a short lease should consider how they will promote the tenant’s investments in the property:
     - Reimburse tenant for reasonable and/or pre-approved improvements.
     - Not appropriate if the landholder wishes to transition to organic certification.
     - Create terms that reduce future transaction costs, e.g.:
       - **Automatic Extension without Notice to Terminate**: The lease is automatically renewed for the renewal term described in the lease (or else same as the first term), unless either party gives written notice for termination at least one year in advance.
       - **Indexing Extensions**: each new term of a fixed cash lease, rent is adjusted by an index using market value of crops, changes in land appraisal, and/or farm inputs. Get index in writing with market date and time for valuation.
3-10 Years:
- Does the lease contract allow the terms, especially rent, to be adjusted? Consider crop-share or variable cash, or a rent adjustment index (commodities mainly).
- Consider what would happen if the landlord transferred the property
- Consider remedies for accumulative tenant breaches.
- Consider who can enter agreements with third parties, e.g. easements, subletting.
- 3 years is the minimum duration for transition into organic certification.

10+ Years: Same considerations as 3-10 year, but especially:
- Renewal and Termination
  - Include manner and timing for both.
  - What happens if you don't follow the terms regarding the manner and timing of renewal/termination. Does the lease automatically renew? For one year or for another lease term? Can the other party override the lease and allow the renewal/termination? State law may apply.
- Ground Lease (usually 99 years): Tenant owns the buildings and improvements, but must surrender them at the end of the lease. www.equitytrust.org/index.htm

4. What type of relationship is formed? Partnership, Investor and/or Landlord/Tenant. Many leases contain provisions stating that the lease does not create a partnership and that neither party has the authority to obligate the other without written consent.

5. Purpose: What activities are, or are not, authorized?
- By Tenant: Create provisions for:
  - Subletting for recreational uses
  - On-farm Marketing, or Agri-tourism. Consider: Indemnification for 3rd-party liability, Licensing & health regulations, Zoning restrictions
  - Protecting certain parts of the property (conservation/permanent pasture)
  - Consider requiring tenant to carry insurance.
- By Landlord: Consider creating provisions addressing:
  - When, where, how often inspections are permitted.
  - When and what notice to give before entering to make repairs.
  - When may the landlord enter to prepare the land for the following year, if tenant has given notice to terminate?
  - Who has the right to grant easements (conservation, ag, or renewable energy)?
  - Who has the right to enter the property or allow others to enter for recreational purposes? What permission/notice is required?

6. Contributions to Expenses & Management – carefully track these
- Will parties be reimbursed/rewarded? How? When?
- Crop-share leases usually require more of the landholder.

7. Responsibility for Repairs & Improvements:
- Typically, tenant is responsible for repairs not requiring specialized skill, and landlord is responsible for major repairs, but the longer the lease, the more tenant becomes responsible for larger repairs/improvements (e.g. installing tile line).
- What type of improvements must the landlord consent to beforehand?
- Will both parties contribute for improvements? Repairs? What is the split?
- How will the tenant be reimbursed for undepreciated improvements left on the property?
- At the end, may tenant remove any or all mobile improvements that tenant created?
8. **Conservation:** Can create clauses, or a separate plan that is then referred to in the lease.
   - Tenant can only enroll in a federal program if the terms of their lease state that they will be in control of the property for the entirety of that contract (so no permanent programs).
   - Who is responsible for compliance, and how will the payments be distributed?

9. **Growing practices:**
   - Courts will read an **implied covenant of good husbandry** into a lease. The duty is to return the land in roughly the same condition as it was when first leased, using common practices (those used in the general area.)
   - Explicit provisions in a lease agreement may require:
     - Specific practices (fallow, lime, cover crop, no-till, not using certain pesticides).
     - Benchmarks for soil samples, to be checked at regular intervals (humus, N, pH)
   - Consider requiring that the property be kept neat & tidy, but...
     - Include a clause recognizing that some conservation practices may increase presence and tenacity of weeds.
     - Landlord can agree to reduce rent in exchange for measurable improvements to the soil, or for using certain conservation practices.

10. **Transfer of Interest:** Consider provisions that...
    - Prohibit tenant from subletting, or require landlord permission and approval.
    - Require the landlord to make the lease a condition of any sale or transfer of ownership.
    - Clarify that the lease is binding on the heirs and successors of the parties.
    - Remember, parties can always negotiate an early termination. If an early termination clause is used it is particularly important to accompany it with a clause requiring reimbursement for the tenant's unused portion of improvements.

**Best Practices After Entering a Land Contract:**

- **Communicate** regularly with the tenant!
- **Notify** the tenant before inspecting the property, unless the lease permits surprise visits, and/or you reasonably suspect the tenant will try to hide egregious violations of the lease.
- **Keep good records** of your performance, in case of challenges.

**If Things Fall Apart:**

**Dispute Resolution Process** (because no lease is water-tight!)

- **Binding Arbitration:** parties give up their right to sue in court
- **Alternative Dispute Resolution (ADR)** parties can sue if they can’t agree.

**Remedies for Default:** Statutory remedies may trump lease terms, especially for residence.

- Termination of the lease: Grounds for termination should be specified clearly.
  - Requirements for maintenance and benchmarks should be clear.
  - A lease may require the landlord to provide credit for any green manure left.
  - Courts may prohibit termination mid-season because of the undue hardship to the tenant, unless the violations are egregious.
  - Consider giving the landlord the right to enter to care for and harvest the crop.
  - Consider requiring a deposit fee for specific clean up activities after the lease ends.

**Resources:** Feel free to email nellie@roguefarmcorps.org for the links.

- California FarmLink - Cash lease and fact sheets: [http://www.californiafarmlink.org/resource-library](http://www.californiafarmlink.org/resource-library)
LEASE AGREEMENT WITH MALINOWSKI GARDENS LLC FOR 2017

1. Basic land lease for growers is 10% of gross receipts with a minimum of $600/acre. Lease will be from Nov. 1 to Nov. 1. Lease allows for purchase of working of the ground in the spring for planting one time, to a ready for final tillage condition for $45/hr, 1 hr min. Final tilling machine time with a driver can be purchased for $60/hr in 2016. 1 hr min. All fees and charges will be billed invoiced by the 10th of the month and are to be paid by the 30th of the month. Unpaid balances will be transferred to the next month and charged a 1% late fee for each month thereafter. Non-payment of invoices for three consecutive invoices may result in immediate termination of lease and forfeiture of all lease fees.

2. Malinowski Gardens places a value of $600 per acre, per year as a minimum value for its land. This is considered the minimum rent per acre. Final rent is 10% of gross sales with a $600 minimum and $1200 maximum rent per acre, per year. The minimum is due in at contract signing, or April 1, whichever is earlier, and will be applied against future 10% rental for that year, until exhausted. Updates on gross income, and additional rent owed are due on July 1, September 1, and the end date of the annual lease or November 1.

3. Irrigation water to site to be provided with the cost of water to be divided by usage and billed at 3 times the cost of power to provide for water and capital irrigation maintenance. The water usage bill will be included on the invoices with the machine fees, monthly rentals and applicable deposits.

4. Potable water will be tested once a year for e coli.

5. Growers exceeding gross sales of $5000.00 are required to be certified by Oregon Tilth or the Oregon or Washington Department of Ag. at their expense.

6. Lease renewal preference is given to existing lessees. Malinowski Garden reserves its right to decline to renew based solely at its discretion by giving notice by prior to contract signing.

7. An outhouse will be located in the vicinity of your land rental on the farm for a rental of $10 per month, plus, maintained as needed by lessees using it during the growing year. Our recommended cleaner charges about $35 per cleaning, and we require a final fall cleaning at the end of the season. Charges for the outhouse will be divided by the lessees in the immediate vicinity of each outhouse.

RULES AND DEPOSITS

1. Malinowski Gardens provides for a community of Growers and Gardeners. We must treat each other with care and respect, for both persons and property. We must insure our mutual success. Failure is grounds for non-renewal of lease.

2. Malinowski Gardens has a zero tolerance policy of abuse of any kind of any employees, customers, volunteers or other persons on farm property. Such activity will result in immediate termination of lease and forfeiture of all fees as outlined above.

3. Lessee is required to carry all necessary insurance coverage for principals, employees, volunteers and customers. Malinowski Gardens is not liable for any damages for lack of proper insurance. Malinowski Gardens LLC, and Malinowski Farm must be listed as additional insured.

4. A $200 deposit will be required to cover the replacement of each meter needed to measure use of potable water. If meter is returned in useable condition, deposit is 100% refundable. Amount of deposit will depend on the cost of the meter.
5. Growers will be assessed a deposit of $200/year, for cleanup deposit, due at contract signing, and at the start of each year until a balance of $400 is reached. Deposit will be held to cover cost of clean up if rent is terminated and clean up/removal is not completed within 30 days of lease termination. Clean up fees will be $20/labor hour plus transport and dumping fees, any remaining funds not used for cleanup will be returned to lessee. All tools and equipment remaining on the property after 30 days from lease termination will become property of Malinowski Gardens.

6. Lessee must be present for Oregon Tilth inspection, if certified as a part of Malinowski Farm. We will attempt to schedule this so it is convenient for all lessees under Malinowski Gardens. If lessee is not able to be present during Tilth inspection, they must provide Malinowski Gardens with applicable documents and records as required by Tilth. If lessee’s absence causes an additional visit by Tilth, lessee will be required to pay any additional fees Tilth may charge due to the return visit.

7. All placing or pouring of concrete for pads or post anchors shall require a deposit of $25.00 per individual hole or pad, plus a map showing locations. The deposit will be returned if concrete is removed within 30 days of termination of lease and area restored.

8. Use of intoxicants, illegal drugs and tobacco, as well as any illegal activities is strictly forbidden on Malinowski Gardens’ property. Such activities will result in immediate termination of lease and forfeiture of all lease fees.

9. Lease will be terminable without notice if at any time lessee’s action could and/or does cost Organic Certification of any lands used by the lessee. Yearly land lease will be forfeit and additional fees to cover rehabilitation and/or rental of outside property until Organic Certification has been restored will be charged to lessee. As of Jan. 1, 2017, those charges are set at $800 per acre per year minimum until Oregon Tilth recertifies the land, currently three years. Total fee will be due at termination of lease.

10. Area must be kept neat and tidy. Trash, food containers and wrappers, empty water bottles and pop cans must be removed at the end of each working day. No long term storage of trash will be allowed on the property.

11. Poisonous plants must be mapped and fenced by at least a 3 ft child resistant fence.

12. Lessees should provide, and mark all hand and power tools and irrigation equipment needed. Unmarked tools and equipment are assumed to be property of Malinowski Gardens.

Signatures of lessee on this document also indicates agreement that lessee will provide a copy of each year’s certification application for land certified on Malinowski land, and grants Malinowski Gardens LLC permission to access your Organic certification going back 5 years from the date of this document from your Certifier.

Any deviation from the above guidelines must be in writing and agreed to by all parties. Failure to do so may result in immediate termination of lease fees and all costs for restoration will be charged to lessee.

Malinowski Gardens LLC     Lessee

_________________________________________   Date ______     ___________________________   Date ______

_________________________________________   Date ______     ___________________________   Date ______