Taken from [New England Food Policy Report](http://www.clf.org/wp-content/uploads/2014/03/1.New_England_Food_Policy_FULL.pdf) – March 2014

I. REDUCING FARMLAND CONVERSION

CURRENT USE PROPERTY

TAX VALUATION

*Introduction*

Every New England state has a program that permits taxation of agricultural land based on the actual, ongoing use of the land rather than its full market value or highest and

best use. In most parts of the region, highest and best use is usually considered residential or commercial development.

American Farmland Trust’s Farmland Information Center cites three purposes of “current use” programs:

• Helping farmers stay in business by reducing their real

property taxes;

• Treating farmers fairly by taxing farmland based on its

value for agriculture, rather than at fair market value,

as if it were in residential use; and

• Protecting farmland by easing the financial pressures

that force some farmers and farmland

*Size*

New Hampshire, Massachusetts, and Maine have minimum acreage requirements to qualify for current use valuation;

*Farm Buildings*  
New Hampshire also allows towns to assess farm structures at “no more than their replacement costs less depreciation.

*Income*

Several states require parcels to gross an agricultural income of between $500 and $5,000 before the landowner applies. These income requirements are often required for several successive years. Massachusetts and Connecticut are exceptions. Massachusetts law requires only that the land be used with the purpose to gross the

minimum income, insulating farmers from lean years.

The Connecticut statute does not set an income threshold, but local assessors may consider it in determining eligibility. Vermont has an income exemption for orchard land that is planted to fruit producing trees, bushes or vines that are not yet of bearing age.18 Vermont and Massachusetts both have a graduated income threshold. Massachusetts requires $500 of gross income on the first five acres, and an additional $5 for every acre thereafter, with an exception for wetlands and woodland, which only need to produce 50 cents per acre.19 Vermont requires $2,000 for any plot up to 25 acres, and an additional $75 for each acre over 25 acres, up to $5,000. While Massachusetts requires a five-acre minimum, the Vermont approach, with no minimum acreage, allows small parcels to qualify as long as the parcel is producing $2,000 in income annually.

*Application:*

Farmland under current use valuation is generally assessed

*Enrollment:*

Data detailing the percentage of eligible land enrolled in current use programs in each state is not readily available. In New Hampshire, landowners have enrolled nearly 3 million acres, though this total includes all lands in the program, not just farmland. at “the price per acre which the land would command if it were required to remain henceforth in agriculture.”

*Penalties for withdrawal from the program:*

All New England states charge landowners a recapture tax when they take land out of current use valuation for development.29 This “land use change tax” penalty generally

decreases the longer land is in the program.30 Massachusetts has strong incentives to keep land enrolled in its program. In addition to the recapture tax levied on the original owner, the Commonwealth charges a conveyance tax on the new owner taking the land out ofthe program.31 Additionally, Massachusetts law provides a right of first refusal to municipalities hosting enrolled farmland proposed for sale and conversion. The right of first refusal gives a municipality the option to buy land under the current use valuation program ahead of potential developers or conversion by the existing landowner.32 New Hampshire gives municipalities the option of directing money from land use change taxes to a town conservation fund.37 These funds are administered locally, and

municipalities can use the money to purchase conservation easements, among other options.38 Currently, 160 communities in New Hampshire have chosen to direct these land use change taxes to conservation funds, which in one recent year grossed more than $7.5 million.39 Maine has added to its property tax toolbox a new program for towns that enables them to further reduce local property taxes. Under the Voluntary Municipal Farm Support Program, a community can adopt a local program

that lowers property taxes on participating farms beyond the reduction available through current use taxation. In exchange for this additional tax relief, a farmer must place an agricultural conservation easement on his or her land that remains in effect for at least 20 years. The program is intended to boost farm profitability while helping communities protect farmland without having to raise capital to purchase an easement. To be eligible for the program, state rules require that the parcel be at least five acres; the parcel produce at least one agricultural crop that generates an annual gross income of at least

$2,000; and eligible farm buildings be used for producing or processing agricultural crops.40 z  
• Consider changes to current use statutes to incentivize

additional leasing to farmers and longer lease terms.

*State Estate Taxes*

New Hampshire has no state estate or inheritance tax.

*Federal Taxes*

The federal estate tax special use valuation assessment allows farmland to be valued for estate tax purposes at its agricultural use value, but limits the exemption

to $1 million. The Family Farm Estate Tax Relief Act of 2010 (H.R. 5475) proposed to eliminate the cap for use value assessment, retained the recapture provision if the property or a portion is sold or ceases to be used for agricultural purposes, and added an adjustment of the recapture tax to reflect any increase in the farmland’s value. An analysis of how an increase in the exemption would affect New England farms would be

helpful, as would an analysis of the changes proposed in H.R. 5475.

*Policy Options*

Federal

• There are many legislative proposals to revise the federal estate tax. One such proposal, developed by American Farmland Trust, proposes to revise the special use valuation assessment to provide a significant incentive to keep agricultural land in production.

The proposal would eliminate many of the restrictions on eligibility for special use valuation assessment while maintaining the requirement that the property

continue to be used for farming and preserving the current valuation methodology. These changes would enable anyone whose land is devoted to agriculture to

avoid estate tax on the entire value beyond its agricultural value provided that the land continues to be used for agriculture.   
Specifically, it would:

»» Eliminate the requirement that the property pass

from the decedent to a family member.

»» Eliminate the requirements that the decedent or

members of the family have “materially participated”

in the operation of the property prior to the

farmer’s death and continue to do so after the death

of the decedent.

»» Eliminate the requirement that to qualify for special

use valuation the real and personal property

devoted to a qualified use must comprise at least 50

percent of the value of the decedent’s estate.

»» Expand the recapture period from 10 to 30 years.

»» Allow property that has been valued using IRS Code

section 2032A to be freely transferred without triggering

recapture — as long as it is maintained in its

qualified use— and eliminate recapture on conservation

easement sales.

»» Eliminate the cap on the amount by which an

estate’s value may be reduced.

State

• Vermont and Rhode Island are the only states in the region with special provisions for farms in their estate tax. Changes to estate taxes have been urged by farm

advocates in several New England states.

PLANNING AND LAND USE

Accordingly, land use plans and zoning around agriculture differ from town to

town, in some cases with little coordination or oversight from state government. While several states have state planning offices and statewide planning efforts, only

Vermont and Rhode Island have statewide planning statutes requiring towns to coordinate their land use planning efforts with state land use policies.

New Hampshire and Massachusetts have compiled model zoning ordinances, smart growth handbooks, and other educational or advisory literature to help municipalities develop smart growth-oriented land use ordinances and bylaws.77 These programs are crucial components of state-level smart growth policy in New England, in particular because many New England municipalities lack professional planning or legal staff and rely on volunteer land use and planning boards to review development proposals and to draft local zoning and development rules.

*Regional Planning Commissions*

Policy Options

• States can do more to maximize the impact of codified smart growth principles by requiring all local and regional plans to incorporate smart growth techniques. Rhode Island’s Comprehensive Planning and Land Use Act provides a useful framework of coordination between state and local planning, and conformance of local zoning to local comprehensive plans.

• States can use technology to unify state, regional and local planning. GIS mapping and extrapolation software visually demonstrate the effects on agriculture of current and past planning strategies, and can show the impact of potential future policies. After studying potential effects, states can designate areas for varying levels of growth, from prime agricultural lands to dense urban infill.

• Amend state zoning laws to permit plant agriculture in all zoning districts, as Rhode Island has done.

FARMLAND MITIGATION

With fewer than 2 million acres in active agricultural use and more than 14 million residents, New England is a densely populated region, with less than one-fifth of an

acre of farmland per person. Continued loss of farmland in the region, especially its most productive land, threatens the region’s future production capacity as well as its economy and environment. Since 1982, 10 percent of the region’s crop and pastureland has been converted to development; some states, such as Rhode Island and Massachusetts, have had significantly higher conversion rates (22 and 18 percent, respectively).102

Government policy at the federal, state and municipal level has often, intentionally or not, been a driver in farmland conversion. At the federal level, the Farmland Protection

Policy Act, enacted in 1981, was intended to reduce the federal government’s role in farmland conversion, but has been less than effective in doing so.

While the Farmland Protection Policy Act has helped identify federally funded projects that may convert farmland, it has done little to stop or mitigate the impacts of those

projects. Specifically, agencies may deny funding based on the analysis of impact to farmland, but the FPPA does not require federal agencies to alter projects to avoid

or minimize farmland conversion. The only recourse for reviewing decisions is litigation brought by state governors; no other entity has the authority to challenge federal

action under the act. Other shortcomings of the Farmland

Protection Policy Act include:

• Agencies supporting the development can determine whether a site contains farmland and thus is subject to the act.

• Although the Natural Resources Conservation Service evaluates the land, the final review relies on site assessments performed by agencies that are not concerned with farmland protection.

• The act lacks reporting requirements and measures to evaluate effectiveness. 107

*State*

States should enact farmland mitigation policies that achieve the following:

• State funds and federal funds administered by state agencies should not be used for the conversion of agricultural land to other uses when feasible alternatives are available.

Where farmland must be converted, mitigation should be required.

• Any project proposed by a municipality, nonprofit or private party that requires state approval, permit or assistance should be reviewed by the state to determine if agricultural land will be converted to nonagricultural use.

»» The conversion of agricultural land to other uses should not be allowed when feasible alternatives are available.

»» If avoiding farmland loss is not possible, mitigation should be required.

• Options for the mitigation of farmland loss to non-agricultural uses include:

»» The permanent protection of farmland on-site;

»» The permanent protection of agricultural land offsite;

or

»» Financial contributions to a state, municipal or nonprofit farmland protection program.

INCREASE PERMANENT PROTECTION

New England has long been considered a leader in farmland protection, and several interviewees reiterated the important role that state PACE programs — also known

as “purchase of development rights” programs — play in keeping farmland more affordable for both new and established farmers. These programs also help farmers expand and reinvest in their farm operations.117 Since 1996, the federal Farm and Ranch Lands Protection Program (FRPP) has provided significant resources for farmland protection throughout the region, but the program has become increasingly inflexible and difficult for both partners and participating landowners to navigate. Funding for state PACE programs has been less predictable over the past few years as a result of the recession and tightening state budgets.

The Farm and Ranch Lands Protection Program operates slightly differently in each New England state. In Vermont and Massachusetts, its primary partners are the state PACE programs.   
  
In the other four states, land trusts and towns partner more frequently with FRPP without the involvement of the state PACE program, either because the state program has insufficient funding or because the farmland to be protected does not meet the criteria of the state program. FRPP has become an increasingly problematic partner; according to a number of state PACE program managers and land trust staff, frequently changing program rules, inflexible easement terms, and delays caused by administrative reviews have led some states to return FRPP dollars and have caused some potential projectsto fall through.

*Support for Existing Programs  
Federal*

• The federal Farm and Ranch Lands Protection Program is critically important to the region’s farmland protection efforts. In both the House and Senate versions of the next farm bill, this program has been reconfigured and renamed the Agricultural Lands Easement Program. The reconfigured program combines the Farm and Ranch Lands Protection Program with the Grasslands Reserve Program. The Agricultural Lands

Easement Program is part of a larger Agricultural Conservation Easement Program.  
• Interviewees underscored the importance of the region’s state PACE programs to new and established farmers alike, but most programs are not meeting demand. Increased funding for these programs is needed.

• Reauthorization of the enhanced federal tax incentivefor conservation easement donations is needed,to continue incentivizing landowners to protect farmland. An analysis of its impact on farmland protection in New England would help to build support for the incentive among federal policymakers.

*State*

• States should consider adopting mechanisms such as Massachusetts’ Community Preservation Act that incentivize farmland protection efforts by communities.

• Additional funding is needed for the long-term monitoring and enforcement of agricultural conservation easements. States should consider creating a dedicated

trust fund for this purpose.

• To keep farmland protected through PACE programs affordable, states that have not done so should consider adopting an Option to Purchase at Agricultural Value in their PACE programs.

• State land conservation agencies, farmers and land trusts should increase communication to foster better understanding of easement terms and conditions and

their effects on farm viability.

EXPANDING LAND ACCESS

Urban Agriculture: Zoning

*Policy Options*

• Consider amending state laws to prohibit local zoning regulations from unnecessarily hampering the expansion of urban agriculture.

• Update comprehensive plans to explicitly include goals supporting urban agriculture. Rhode Island’s Comprehensive Planning and Land Use Act states that any comprehensive plan must contain a land use component that designates the proposed general distribution, location and interrelationships for land uses, including agriculture. Similar policies could be pursued in other New England states.

• Reduce local regulatory barriers by making zoning ordinances less restrictive or ambiguous toward urban agriculture:

»» Reduce special permitting obligations for agricultural land uses, which add expense and regulatory uncertainty.

»» Consider using interim zoning if immediate zoning relief is necessary while a more comprehensive reform effort is underway. Interim zoning preserves the status quo and prevents additional development and other incompatible uses in designated areas while providing cities with time to update their comprehensive plans and amend their regulations relating to urban agriculture. This would prevent

the usual flood of development that occurs whenzoning revisions are proposed.

»» When comprehensive zoning reform is not possible, more localized or temporary efforts, such as urban agriculture overlay districts, provide an opportunity to carve out large or small areas where urban agriculture is allowed regardless of underlying zoning

restrictions.

• Provide frequent opportunity for community input and education around public health concerns related to urban soil contamination during policy development processes.

URBAN AG SOIL CONTAMINATION

*Research and Analysis*

• States should encourage and make routine the implementation

of best management practices for growing in soils that are not contaminated by legal standards, but may still have background levels of contaminants that pose public health threats.

*Policy Options*

• Update soil contamination laws and programs to anticipate agriculture as a future land use for remediated properties. Most policies currently include categories

for future land uses such as residential, commercial and industrial, but do not have an agricultural category. This can make it difficult to interpret from remediation records whether a property is sufficiently clean to be used for food cultivation.

FARM LINK PROGRAMS

*Support for Existing Programs*

• The federal Beginning Farmer and Rancher Development Program has provided important resources for farm linking services in New England. The program should be reauthorized in the next farm bill and fully funded.

• States should help support farm linking services with resources directed to state or private sector programs.

BEGINNING FARMER TAX CREDIT

The high cost of farmland in New England and competition for farmland among established farmers are barriers for new farmers to purchase land for a start-up farm

enterprise. Leasing is often a viable and preferred alternative. There are currently about 624,000 acres of farmland rented out by nearly 20,000 farmland owners across New

England. While there is no way to easily measure the extent of vacant, underutilized or easily restored farmland that could be added to the pool of available farmland for

lease, a beginning farmer tax credit is one tool that might encourage New England farmland owners to lease land to new and beginning farmers.

*Research and Analysis*

• Undertake an analysis, as recommended by the Land Access Project, of a state-level beginning farmer tax credit linked to property taxes to understand its potential impact and benefits. Such an analysis might consider:

»» Basing the amount of the income tax credit received on the property taxes paid by the landowner on the land subject to the lease.

»» Requiring that any lease be for a minimum term of five years, and for a minimum of two acres of prime or statewide-important farmland.

»» Requiring that the lease be with a new and beginning farmer as defined by the USDA.

• A two-acre minimum could encourage homeowners with large house lots that may include eligible farm soils to consider renting some of their excess land to new and beginning farmers. This would likely create opportunities for new and beginning farmers in urban and suburban areas. As urban land may not be enrolled in or be eligible for a state’s current use property tax program, states should consider a per-acre and per-credit cap to enable all eligible landowners to participate, regardless of the amount of property tax they pay.

LAND LEASING: PUBLIC LANDS

*Open Land*

Even in states where leasing programs exist for public farmland, more comprehensive, regularly updated surveys of public landholdings done with an eye toward identifying

parcels suitable for commercially viable agricultural enterprises could enhance land access.

In 2012, for example, New Hampshire established a committee to study the promotion of leasing state-owned land to beginning farmers. By participating in this study, the Department of Resources and Economic Development has cultivated additional contacts and anticipates leasing more field land to farmers in the future.

*Research and Analysis*

• States that have not already done so should consider taking an inventory of their state-owned lands to determine their suitability for agricultural production.

• Encourage dialogue between state and federal natural resources agencies, state agriculture agencies, and farmers to address management concerns around leasing public land for agriculture.

• Analyze the potential of state-owned forestland for silvopasture and cultivation of agricultural products.

*Policy Options*

• Encourage the permanent protection of state-held farmland, as Connecticut did in 2013 with the 825-acre Southbury Training School.

• Where feasible and appropriate, encourage state conservation agencies to incorporate agricultural production into their land management strategies.

• Consider strategies to improve tenure security, such

FINANCING LAND ACQUISITION

The high cost of land in New England is one of the most significant barriers to both farm expansion and new farm start-ups. Competition for land continues to elevate prices beyond the reach of many established farmers and for most young and beginning farmers.

*Individual development accounts*

A tool that new and young farmers could use for land acquisition is the individual development account (IDA). All New England states have authorized the use of IDAs

for income-eligible individuals and families to save for a first home, education or small business. The 2008 Farm Bill created an individual development account pilot program

for beginning farmers to start their businesses and acquire land. Similar authorization and funding at the state level could expand use of these accounts for agricultural

purposes.

The California FarmLink IDA program, created in 2003, is the nation’s most robust IDA program for farmers. California FarmLink raises funds from private sources to match farmer investments.

*Policy Options*

*Federal*

• Funding for the Beginning Farmer and Rancher Individual Development Accounts program should be appropriated, and at least one New England state

should be included in the pilot to reflect the large number of new and beginning farmers in this region. Use the pilot program to determine how individual development accounts might best be structured to help new, beginning and limited-resource farmers purchase

farmland.

• Lift the restriction on future subdivisions of protected farms in the Farm and Ranch Lands Protection Program.202 Allowing appropriate subdivision of larger protected farms and farm parcels will not only help farms adapt to changing agricultural circumstances and needs, but can also provide opportunities for new and beginning farmers to gain access to smaller farm parcels at a more affordable price.

• Require the Farm Service Agency to permanently protect farmland on which it forecloses, and to sell the land with an Option to

*State*

• State PACE programs provide a foundation of permanently protected land for the future. Even without the Option to Purchase at Agricultural Value, studies and farmer surveys show that protected farmland is more affordable to farmers than land that has not been protected.

Accordingly, state PACE programs should be fully funded to meet demand.

• The Land Access Project has a series of recommendations aimed at making farmland more affordable for new and beginning farmers, including:

»» Extending the Option to Purchase at Agricultural

Value in all state PACE programs to help maintain future farmland affordability.203 State PACE programs could also consider purchasing an OPAV on

arms and farm parcels already protected with traditional easements that did not include an Option to Purchase at Agricultural Value provision. Purchasing an OPAV on already-protected farms could target land that is most at risk for estate conversion and that offers ownership possibilities for new and beginning farmers.

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n state PACE programs, where applicable, lift restrictions on future subdivisions of protected farms. Allowing appropriate subdivision of larger protected farms and farm parcels will not only help farms adapt to changing agricultural circumstances and needs, but can also provide opportunities for new and beginning farmers to gain access to smaller farm parcels at a more affordable price.

»» Within the existing PACE programs, develop entirely new offerings geared specifically to new and beginning farmers. A “starter farm” program within existing

PACE programs would target the protection of smaller farm properties with housing. To encourage the property to remain a stand-alone farm, require that the house stay with the farm. To maintain its future affordability, consider restricting the size of

the house.

• Consider expanding existing state individual development account programs, or establish new programs in those states without one, to specifically include the

purchase of farmland as an authorized use. Increase the annual cap on participant savings that can be matched.

INCREASING AVAILABLE FARMLAND

*Agricultural Land Restoration*

Meeting a higher percentage of New England’s foodneeds with regionally sourced food will require both more intensive use of current farmland and the cultivation of additional land. In some instances, farmers may be able to increase productive acreage by bringing brushy areas around fields into production.

*State Programs*

Connecticut is the only New England state with a program that helps landowners restore farmland. Farmers can cost share with the Farmland Restoration Program to restore

land with prime and important soils to active agricultural use.

In Massachusetts, the Community Preservation Act is a funding mechanism used to preserve open space, farmland and historic sites, create affordable housing, and

develop outdoor recreational facilities.

At the state level, consider the priorities of current forestland protection programs to see if they might be expanded or modified to focus on the protection of prime and important agricultural soils.