

State-owned Land for Farming:

Policies and programs for making state-owned land in New England states available for agriculture



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in New England states available for agriculture**

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***THIS PAPER IS ONE IN A SERIES PRODUCED THROUGH THE
NEW ENGLAND LAND ACCESS POLICY PROJECT***

A collaboration between American Farmland Trust (AFT), Conservation Law Foundation (CLF) and Land For Good (LFG), the New England Land Access Policy Project facilitated dialogue in each New England state to identify policy barriers and opportunities around land access and farm transfer.

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They are listed at the end of the report.

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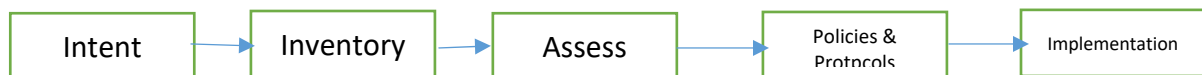
Introduction

The purpose of this report is to assess how and to what degree the six New England states are making state-owned land available for agriculture. The report also suggests steps that state agencies and advocates can take to facilitate greater access to state-owned land for farming.

The context for this investigation is the increasing number of farm seekers in New England, a burgeoning interest in strengthening our regional food system, and the decrease in available and affordable land. For many farmers, access to land is one of their primary challenges. At the same time, agricultural land is a finite resource that is threatened by competing land use pressures. One way to address this challenge is to consider what resources our state governments can bring to bear. Because of their legislative and regulatory authority, as well as the amount of public land that is or may be suitable for farming, states can take active and helpful roles.

This report posits that public agencies have a role to play in fostering agriculture in New England and supporting a regional food system. To this end, the report summarizes ways that New England states have addressed making state land available for farming. It discusses additional steps that state governments could take to address the farmland access challenge by making state land more accessible. It also addresses other ways agencies and advocates can assist.

This 2015 review reveals that the six New England states vary in their approach to agricultural uses of state properties. In general, the process can be described as follows:



The questions this report seeks to address and highlight are:

1. Intent

- Does state government (the legislature, the governor and state agencies) have intention to make land available to the public for farming?
- If so, what policy instrument is or can be used to express and codify this intent?
- If not, what is the best approach to promoting and institutionalizing this desire? And if it's in place, what might be done to strengthen or enhance current operations?

2. Inventory

- What properties are under state ownership?
- Which agencies have care and control?
- What procedures and data platform(s) are or will be used to collect information?

3. Assess

- How will properties be determined to be suitable for farming by the public?
- What are the natural factors that make a property suitable?
- What are the natural resource constraints, including competing values and priorities, for a property to be used for farming?
- What are the political, procedural and jurisdictional constraints?

4. Policies and protocols

- What is or will be the procedure for placing farmers on state-owned land?
- What is or will be the fee structure and handling of fees?
- What is or will be the criteria for types of farmers and/or operations?
- What agency or agencies is or would provide oversight?

5. Implementation

- How is the policy or program managed?
- How are properties and activities monitored?
- How are changes managed and inventories updated?
- How are inventories made publicly available and, where appropriate, publicized?

Below is a description of what each New England state is doing to make state land available for farming.

Connecticut

In Connecticut, the Commissioner of the Department of Agriculture is authorized under Chapter 422, Sec. 22-6e¹ to “develop a program to encourage the use of vacant public land owned by the state for... agricultural purposes. In order to carry out said program, the commissioner shall:

(1) In cooperation with other state agencies, compile a list of all vacant public land owned by the state, that in the opinion of such agencies and the commissioner may be feasibly used for gardening or agriculture, and

(2) Establish a procedure for application to the department on a form to be furnished by the commissioner for a permit to use available vacant public land for gardening or agricultural purposes.”

For farming purposes, leases shall not exceed 10 years, and must be awarded based on competitive open bidding. Lease fees are to be divided equally between the holding

¹ <https://www.cga.ct.gov/2011/pub/chap422.htm#Sec22-6e.htm>

agency and the Department of Agriculture for the purpose of administering the program. Regulations to carry out this statute were codified (Sec. 22-6e-1 through 8²).

Pursuant to these regulations, the Department of Agriculture solicited “permit proposals” for certain parcels of State-owned Correctional Facility land. The Department has sample permit agreement and lease forms, including a Land Use Plan attachment.

A January 2010 law (Special Act 09-8)³ required the state Farmland Preservation Advisory Board “to conduct a review of any state-owned land (excluding land owned by the Department of Energy and Environmental Protection (DEEP)) to evaluate methods for permanently preserving each parcel...” The Act does not list as a goal making parcels available for use by the public, though it appears clear that was the legislative intent

The Board’s report (entitled “A Report to the Connecticut General Assembly from the Farmland Preservation Advisory Board”) lists seven State-owned properties totaling approximately 1,300 acres, as well as their location, the agency that controls them, the number of tillable acres, and the percentage of the land that is prime agricultural land. It ranked the viability of each parcel as state farmland and recommended that the State either place an agricultural conservation easement on each property and sell the restricted property to a farmer, or convey an agricultural conservation easement to a third-party non-profit whose mission includes the protection of farmland for farming..

Chapter 447, Section 23-8⁴ of the Connecticut General Statutes directs DEEP to establish a publicly accessible geographic information map system and database that contains a public use and benefit land registry containing specific information for all state agency, municipal and conservation organization-held lands. The Public Use and Benefit Land Registry⁵ is intended to cover all of its public lands, which includes information on location, ownership, acquisition details, deeds, easements, encumbrances, rights of ways, surveys, and management and stewardship plans. This statute identifies as its primary goals protection of recreation and conservation areas, historic sites and water supply; agriculture is not mentioned. Consequently, Connecticut’s land registry does not incorporate or track the agricultural capability or value of parcels. This Registry is still in development.

Most recently, Connecticut passed a law (Public Act 14-169) broadly permitting its Commissioner of Agriculture and Commissioner of Energy and Environmental Protection to place conservation or preservation restrictions on any lands in their custody.⁶

² <https://eregulations.ct.gov/eRegsPortal/Browse/RCSA/%7BD5B972E3-A704-45D3-ADEC-CF97F130E349%7D>

³ <https://www.cga.ct.gov/2009/act/Sa/pdf/2009SA-00008-R00SB-01082-SA.PDF>

⁴ https://www.cga.ct.gov/current/pub/chap_447.htm#sec_23-8

⁵ http://www.ct.gov/deep/cwp/view.asp?a=2706&Q=569998&deepNav_GID=1641

⁶ <https://www.cga.ct.gov/2014/ACT/pa/pdf/2014PA-00169-R00SB-00070-PA.pdf> (see: section 3)
<https://www.cga.ct.gov/2014/ACT/pa/pdf/2014PA-00080-R00HB-05419-PA.pdf>

Additionally, Connecticut passed two laws protecting or permitting protection of specific farmland properties: Southbury Training School in Southbury⁷ and Savin Farm in Lebanon⁸. The Department of Agriculture is taking steps to convey an agricultural conservation easement on the Southbury Training School farmland to the Southbury Land Trust as mandated by the legislation, but the transaction is not yet complete. While the Department of Agriculture is authorized to place a conservation restriction on Savin Farm, it has not yet done so. Each law allows the Commissioner of Agriculture to lease, permit or license any portions of the properties for the purpose of engaging in agriculture.) The Savin Farm is under lease to two farmers. The Department of Agriculture has been leasing farmland at the Southbury Training School for over two decades, but is in the process of reconfiguring the leases a public Request for Proposals.

Maine

The Maine Bureau of Parks and Lands is permitted to lease roughly 500 acres of its lands for five-year, renewable terms under Title 12, Section 1838⁹. The Bureau currently leases eight parcels: three to dairy farms (approximately 100 acres each); one for a town's community gardens (roughly 10 acres); a couple of blueberry fields; one to a county sheriff's department for a corrections program (60 acres, vegetables); one to a non-profit agency, which then subleases it for hay; and some pasture for draft horses.

Most of the parcels have been leased to the same farmers for several years. There is no official program or policy, and the rent is either low or nothing. The properties are tracked in the Bureau database and inspected and managed by Bureau staff.

The Department of Agriculture, Conservation and Forestry owns one property that has farmland that is leased to the State Prison System, where inmates produce crops for the food assistance program that supplies some food pantries. The Department of Inland Fisheries and Wildlife may also have properties that it leases.

Massachusetts

In 1981 Governor King issued Executive Order 193¹⁰ (EO 193), which declared the Commonwealth's agricultural land a "finite" and "threatened" natural resource. Among other directives, EO 193 requires the protection of State-owned agricultural land by mitigating the impacts of its conversion. It mandates the Secretary of Energy and Environmental Affairs to identify state-owned land suitable for agriculture. Further, it requires state agencies controlling such land to coordinate agricultural land management policy with the Executive Office of Energy and Environmental Affairs and encourages them to allow for multiple-year agricultural production. Finally, it mandates that agriculturally suitable surplus land shall remain available for farming.

⁷ <https://www.cga.ct.gov/2013/act/pa/2013PA-00090-R00HB-06542-PA.htm>

⁸ <https://www.cga.ct.gov/2014/ACT/pa/pdf/2014PA-00080-R00HB-05419-PA.pdf>

⁹ <http://legislature.maine.gov/legis/statutes/12/title12sec1838.html>

¹⁰ <http://www.mass.gov/courts/docs/lib/eo100-199/eo193.txt>

Additionally, under Massachusetts General Law Chapter 128, Section 7B, any person may apply to the Department of Agricultural Resources (MDAR) for “a permit to use available vacant public land for... farm purposes.”¹¹

MDAR has approximately 1,500 acres in over a dozen properties under its state-owned farmland licensing program¹². Some of these properties are owned by agencies other than MDAR, and MDAR manages the licensing program for them. The properties are hospital and former state hospital and industrial school properties; one is water supply land owned by DCR. MDAR also licenses properties that are under its care and control. Five-year licenses are issued, with an option to renew for another term. The Department follows regulations (330 CMR 18.00¹³) governing its farmland leasing program.

MDAR uses the same licensing procedure as the Division of Capital Asset Management and Maintenance (DCAMM), and its license agreements are modeled on a standard used by DCAMM. Awards are granted based on various criteria, not limited to the highest bidder. MDAR encourages new entry farmers and has facilitated licenses on smaller parcels under one-year special permits. If the operator is successful, a license may be issued.

Lastly, Massachusetts General Law Chapter 128, Section 7D¹⁴ requires MDAR to create an inventory of public lands suitable for farming. Specifically, it states that MDAR “shall, with the cooperation of other state agencies and cities and towns, compile a list of all vacant land that in the opinion of the agencies and cities and towns, can be feasibly used for gardening, arbor culture or farming. The bureau shall, by letters of agreement, contract with such agencies or cities and towns for the use of said vacant land. “Vacant public land” means any land owned by the commonwealth, or any county or municipality therein, that is not in use for public purpose.” No comprehensive, publicly available inventory presently exists. However, Massachusetts has developed a geographic information system – called “OLIVER”¹⁵ – that identifies “prime farmland soils.”

The recently released Massachusetts Food Plan¹⁶ recommends a formal State farmland action plan to improve State data collection around farmland. It states, “Better data, mapping, and analysis of the State’s farmland resources could better inform decisions

¹¹ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXIX/Chapter128/Section7B>

¹² <http://www.mass.gov/eea/agencies/agr/land-use/state-owned-farmland-licensing-program.html>

¹³ <http://www.mass.gov/eea/docs/agr/legal/regs/330-cmr-18-00.pdf>

¹⁴ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXIX/Chapter128/Section7D>

¹⁵ <http://www.mass.gov/anf/research-and-tech/it-serv-and-support/application-serv/office-of-geographic-information-massgis/online-mapping/>

¹⁶ <http://www.mapc.org/sites/default/files/MLFAPFull.pdf>

around land use policies and investments. Publicly owned general lands (State, county, and municipal) are underutilized for agriculture and have not been fully inventoried.”

The Plan recommends encouraging the use of suitable publicly owned land for farming. It suggests that the Executive Office of Energy and Environmental Affairs and other State agencies as needed have adequate resources to undertake an assessment identifying land owned by the State and counties that is either in current agricultural production or suitable for agricultural production. It further recommends:

- For land identified through the inventory as suitable for agricultural production and as appropriate per controlling agency mission, establish a process for negotiating potential agricultural use on parcels with the appropriate State agencies.
- Create standard policies around farming State-owned land, allowing normal agricultural practices so long as they are not inconsistent with mission of the controlling agency and there is recognition of any restrictions on the parcel in question.
- Open State-owned woodlands to maple syrup production.
- Change State law or policy to enable State agencies to use leases longer than the current 5-year maximum licenses on State-owned land.
- Change State law to allow State agencies to retain and reinvest the revenues they receive from leasing farmland to farmers. Develop guidelines around lease fees.

New Hampshire

In 2012, State Representative Tara Sad oversaw the “Report from the Study Committee on HB 1211”¹⁷ (dated Nov. 1, 2012). Its purpose was “to study the promotion of lease [sic] of state-owned land for use for beginning farmers.” The Committee identified state land controlled by New Hampshire’s Department of Environmental Services (DES), Department of Resources and Economic Development (DRED), Department of Transportation (DOT) and Fish and Game Department (F&G). It discussed systems currently in place for any leasing and whether there was a way to make these systems accessible to young and beginner farmers. It recognized the importance of additional farmers and additional farmland, as well as the fact that leasing land can be an advantage for new and beginning farmers. It further posited that leasing state lands to new and established farmers benefits the state in economic development, maintenance of open space and habitat enhancement.

The study revealed that, of the nearly 52,000 acres under F&G, only about 700 acres are fields, 80% of which are leased to farmers under long-standing, 10-year barter agreements where the farmer leaves a portion of the crop or delays harvest to accommodate wildlife.

¹⁷ <http://www.gencourt.state.nh.us/statstudcomm/reports/2091.pdf>

DRED has farm leases on 14 of its reservations. It reports challenges in finding farmers to lease some of these parcels. DRED expects to increase its ability to lease more land to farmers in the future. DRED leases several plots to a non-governmental organization called Small and Beginner Farmers of New Hampshire.

DES controls about 10,000 acres, most of which is not suitable for farming. Agricultural uses might be contemplated on some smaller acreage plots and on the buffers of certain Superfund sites, if appropriate. DOT is responsible for 1,000 parcels and authorized to enter into leases. Most are “uneconomic remnants” under pressure to be sold, but DOT is willing to consider leasing to farmers where appropriate.

The Committee did not find that additional legislation was warranted to enable access to state land for beginning farmers. The Committee recommended 5-year or greater lease terms, uniformity in lease language where possible, consideration of multiple criteria, not just the highest bidder in awards, and better communications between the state agencies leasing land and groups that promote beginning farmers. Importantly, the Committee felt that, through its process, “bonds of common interest have been forged between state agencies and the agricultural community.”

The Committee’s report includes a map of lands owned by F&G and DRED, and lists how many acres and the number of parcels each department owns, as well as the leases those agencies have with farmers. The report also has a significant amount of other useful data, including information pertaining to other New England states. It attaches lease templates and a State Land Lease Farmer Self-Assessment Form.

Rhode Island

The Rhode Island Department of Environmental Management (DEM) is the only agency in RI state government) that makes its land available for agriculture. The Division of Agriculture is located within DEM. DEM leases approximately 14 parcels for farming, and its Division of Fisheries and Wildlife manage the leases. When state land becomes available it is posted to the DEM website¹⁸. The University of Rhode Island leases about 500 acres between three farmers.

State leases have a five-year term with a renewal option. Leases are awarded on a competitive RFP process and must be approved by the DEM and the State Properties Committee. Tenants on Management Area land are required to leave a portion of the crop for wildlife habitat. The Department of Administration assists DEM with soliciting lease proposals. DEM has a proposal offer form and a sample lease agreement.

DEM also leases larger parcels to nonprofits in two unique farm-leasing projects. Snake Den Farm is within Snake Den State Park. 150 acres are leased to the Northern Rhode

¹⁸ <http://www.dem.ri.gov/programs/bnatres/agricult/landlease.php>

Island Conservation District (NRICD) to oversee management of the agricultural acreage and buildings. In turn, NRICD is obligated to bring the historic agricultural property back into production and to offer parcels under long-term sub-lease agreements to experienced farmers. NRICD developed a leasing program for land and buildings, including one apartment onsite. Urban Edge Farm was purchased and preserved by DEM in 2002 and leased long-term to the Southside Community Land Trust which in turn sub-leases to farmers under a collaboratively managed incubator-type agreement.

Rhode Island also recently adopted into law, as part of a bond bill, a new Farmland Acquisition Program. The program will enable the state to purchase farmland for the purpose of selling it affordably to farmers or to lease it for farming purposes. The program is in development and should be operational in the spring or summer of 2016.

Vermont

A Vermont statute, 10 V.S.A. 4147¹⁹, gives its Agency of Natural Resources authority to sell or lease its land, stating: "...the secretary [of the Agency of Natural Resources] with the approval of the governor, may exchange, sell or lease lands under the secretary's jurisdiction when, in his or her judgment, it is advantageous to the state to do so in the highest orderly development of such lands and management of game thereon."

The Agency of Natural Resources has three departments within it: Fish and Wildlife; Forests, Parks and Recreation; and Environmental Conservation. The Department of Fish and Wildlife manages 781 acres of agricultural land through 14 leases statewide. The parcels for these leases range in size from approximately 10 to 200 acres, and these 781 acres represent less than 1% of the approximately 133,000 acres, mostly forested, that Fish and Wildlife manages.

The state's Department of Buildings and General Services manages three parcels of land on roughly 1,000 acres total, two on prison land, and mostly for haying and maple sugaring. The Agency of Agriculture, Food, and Markets does not manage any agricultural land. The Agency of Transportation also has land, some of which may already or potentially could be used for agriculture. Overall, Vermont has no formal management program for agriculture on state land.

Vermont's "Farm 2 Plate Plan" includes a goal that "agricultural lands and soils will be available, affordable and conserved for future generations of farmers...." The analysis portion of the Plan noted that historically, state farms on public land were used for multiple purposes, including growing food on correctional facilities and state hospitals for their own use. (This is true in other states as well.) The report notes that "state farms on public land could employ farmers ... especially [for] institutional settings." But no further recommendations regarding making such land available were raised.

¹⁹ <http://legislature.vermont.gov/statutes/section/10/103/04147>

Findings and Recommendations

What are the public policy challenges and opportunities around public land leasing and land inventorying? What are good models and practices for protecting and making state owned land available and adequately secure for farmer-tenants?

1. Most New England states (Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont) have statutorily authorized one or more agencies to lease land under certain criteria. The policy tools vary. They include:
 - a. Executive Order
 - b. Statute and accompanying regulations
 - c. Administrative rule or agency directive
 - d. Inter-agency agreements (formally or informally established)
 - e. Agency practice
2. While inventories of state land have been encouraged or mandated in several states, implementation remains a challenge. Multiple agencies in state governments hold property, including agencies responsible for agriculture, fishing and wildlife, energy and environment, natural resources, capital asset management, economic development, transportation, mental health, developmental services, and others. Technology offers many tools to help with inventories, but it still takes human management and cooperation. Identifying a single entity responsible for coordinating such an inventory—as CT did with its Farmland Preservation Advisory Board for a subset of state properties—appears to be a successful strategy. ..
3. The online land registry in Connecticut and online mapping tool in Massachusetts represent progress on which to build. These two sites – CT’s Public Use and Benefit Land Registry and Massachusetts’ OLIVER – are not as user-friendly or simple to navigate as may be necessary, and they are not as specifically tailored to agriculture as may be warranted. But the technology is being put into place, and what is needed is increased focus on what information will be most useful to farm seekers.
4. Developing criteria for assessment and selection of state properties for offer can be complicated, given multiple interests and values. In many instances, state-owned land is purchased and may be managed for other natural resources, such as wildlife habitat or water supply, or for its cultural, scenic or historical resources. Where dedicated state funds are used to acquire state lands— such as where fees from hunting and fishing licenses are used to acquire a property— stakeholders may expect exclusive use rather than shared use of that property with agriculture. Determining what agricultural practices might be compatible with other resource values is likely to require expertise from multiple agencies to develop. Allowing state agencies that lease farmland to retain lease revenues could build support for farmland leasing.

5. Criteria and protocols for selecting farmers should be addressed. Transparency and fairness are improved through formal bid procedures. A bid process that incorporates criteria in addition to price can address multiple state agency priorities such as managing for habitat or water quality, or allowing public access. Lease term lengths should reflect objectives related to certain types of farming (e.g., perennials) or farmer (e.g., beginning, veteran, or socially disadvantaged) the state is seeking to foster.
6. There are dozens of unrelated initiatives competing for the attention of legislators, the governor, agency leadership and agency staff, which makes it hard to prioritize the agriculture sector, a relatively quiet constituency. Consequently, the process of facilitating greater access to these lands requires both a marketing effort as well as a clear articulation of the need and adequate resources to support a program.
7. Administering, not to mention expanding, a farmland leasing program requires resources that may tax or exceed an agency's capacity. More critically, inter-agency cooperation and coordination are complex and sometimes contentious undertakings, even with shared vision and clear mandates. With this in mind, with any initiative it is critical to determine what can most feasibly be accomplished.
8. A variety of statutes, regulations, executive orders, inter-agency agreements, and agency practices govern the use of these lands. Coordinating across several agencies and varying mandates requires a concerted effort. To make additional state-owned lands available for farming, advocates and government officials will need to work together to implement programmatic requirements for each state's unique objectives and conditions.
9. A concerted advocacy campaign could put the issue (and opportunity) more on the radar screen of legislators and government officials. Advocates could employ a strategic approach, involving meetings with key legislators, the governor's office, relevant agency heads, and agency staff, calling attention to specific opportunities for improvement and simple steps that can be taken to heed existing mandates and expand existing programs. Advocates would need to make the "ask" distinct and easy to understand, with clear, achievable goals, and building from a solid foundation based on what each state already has in place.

This report and the footnoted web links provide sample language for various policy tools that have been successfully used by one or more New England states. In addition, there are examples from other states (e.g., New Jersey, Hawaii, and Minnesota) that could move the needle on public farmland access. Best practices and model documents can inspire states and advocates to develop, improve, or expand state land leasing initiatives.



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