Farmland Access and Tenure Innovations

Policy and Program Suggestions to Promote Land Access for New England's Beginning Farmers

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INTRODUCTION

In two recent national surveys of young and beginning farmers, access to land was ranked as a top challenge.[1,2] Beginning farmers in New England face particularly daunting obstacles in a region where cropland and pasture make up less than 5% of the land base and the price of farmland in some areas can exceed ten times the national average. It is essential to develop new strategies to make farms and farmland more accessible, affordable and secure for beginning farmers for the region to sustain and grow its farm sector.

To that end, agricultural service providers from agencies, academia and the private sector collaborated to explore program and policy options. Collaborators participated in the Tenure Innovations Task Force convened by Land For Good (LFG) as part of its Land Access Project. LFG is a New England nonprofit specializing in farmland access, tenure and transfer. The Land Access Project (2010–2013) was supported by the USDA Beginning Farmer and Rancher Development Program.

As a region, New England has some of the highest farm real estate values (land and buildings) in the country.[3] The average per acre value for the six states as reported by the National Agricultural Statistics Service (NASS) in 2012 was $7,145 with a range of $2,750 in Vermont to $12,000 in Rhode Island. This regional average would place New England in a statistical tie with Maryland and California for second place behind New Jersey's $12,200 for the highest per acre farm real estate value in the Nation. Rhode Island, Connecticut and Massachusetts, all with values over $10,000, are right behind New Jersey with the highest state per acre values in the country. The average cropland value in New England was close to double the national average ($6,940 vs. $3,550) and pastureland was five times the national average.

No doubt the values for farm real estate in New England are influenced by non-farm market pressures, both to develop open farmland for residential and commercial uses, and to purchase farms for recreational, hobby and lifestyle reasons. According to the 2007 National Resources Inventory (US Department of Agriculture), over 23 million acres of farmland were converted to developed land uses from 1982–2007. Three New England states, Rhode Island, Massachusetts and New Hampshire, were among the top five states in the percent of their agricultural land converted during this period.

Even within the farming community, competition among established farmers for land to purchase or rent drives the price out of reach for most beginning and limited resource farmers. This climate of high farm real estate values and intense competition for land poses a significant challenge for new and beginning farmers with limited access to credit and capital looking to purchase a farm or farmland.

It was in this context that the Land Access Project's Innovations Task Force (ITF) researched, reviewed, explored and analyzed programs, policies and incentives to increase the opportunities for new and beginning farmers to access land. The ITF also sought strategies to encourage private and public landowners to rent or sell their land for farming, in particular to new and beginning farmers.

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1 Shute, L. L. (2011) *Building a Future with Farmers: Challenges Faced by Young, American Farmers and a National Strategy to Help Them Succeed.* Tivoli, NY.

2 *Adequate Land Ranks as Top Concern of Young Farmers.* The Voice of Agriculture. American Farm Bureau Federation (2013). Retrieved from www.fb.org/index.php?action=newsroom.news&year=2013&file=nr0307.html.

3 Land Values, 2012 Summary. August 2012. USDA National Agricultural Statistics Service, ISSN: 1949–1867.

To inform its discussions and suggestions, the ITF commissioned several studies. One study analyzed the experience and effectiveness of the Option to Purchase at Agricultural Value (OPAV) utilized by the Massachusetts and Vermont Purchase of Agricultural Conservation Easement (PACE) programs. Another study assessed the legal framework in each state for long-term leases, licenses and deed restrictions. Another report documents lessons learned by farmers graduating from a farm incubator onto other land. A survey was conducted of various investor groups and individuals interested in investing in sustainable farming to assess the extent to which their investment models and objectives addressed access to land by new and beginning farmers.

The policy and program suggestions presented by the ITF are framed by a circumstance unique to New England that reinforces that the land access needs of new and beginning farmers must be addressed by very specific and targeted solutions.

The six New England states have long been leaders in the Nation at protecting farmland from urban and suburban development. All six states have created state-funded PACE programs to compensate landowners for restricting the future use of their land. In the late 1970s, Massachusetts and Connecticut established two of the first programs in the country. Collectively, the region's states have permanently protected close to 275,000 acres of farmland—more than 10% of the total acres protected by such programs across the country.

The intent of these programs is to create a pool of protected farmland that will be available into the future for agricultural use and production. To further ensure that the conserved farmland is affordable for commercial agriculture, Massachusetts and Vermont have both instituted the addition of an OPAV to the conservation easements purchased on farmland in their states. The OPAV gives the easement holders the right to purchase a conserved farm at a predetermined agricultural value. The provision was included in both programs to avoid the unintended consequence of protected farms selling to non-farmers at inflated prices. The OPAV is triggered when a conserved property is offered for sale, except that certain sales are exempt. These typically include sales to family members and sales to defined "Qualified Farmers."

So in Massachusetts and Vermont not only is there protected farmland potentially available for new and beginning farmers, there is also a mechanism in place that theoretically would make such access achievable. However, in the analyses commissioned by the Land Access Project of the experience of OPAV in the two states, while the provision has had the intended effect of keeping protected land in the hands of farmers, established farmers with access to credit and collateral were found to routinely be in a position to out-bid new and beginning farmers for the land. (See OPAV report www.landforgood.org.)

New and beginning farmers in New England thus find themselves with stiff competition for available farmland—high land values, a robust market for farmland for non-farming purposes and established farmers willing and able to purchase protected farmland to expand existing operations.

New England has many essential elements in place to create opportunities for farmland to be made available, affordable and secure to new and beginning farmers. Each state has a version of a use value or preferential assessment property tax program with revenue-from-farming requirements that encourage non-farming landowners wishing to participate in the program to rent to farmers. There are no legal impediments to leasing land on a long-term (i.e. more than 5 year terms) basis. All six states have committed to protecting farmland with PACE programs. The region's Departments of Agriculture administer a collection of creative programs to encourage farm business planning, infrastructure investments and the installation of environmental and energy practices. Local land use zoning ordinances in some communities have created large house lots with potentially farmable soils; and the region is home to a large and vibrant land trust community many of which address farming and farmland protection among their core mission areas.

The ITF's suggestions to improve and expand access to farmland by new and beginning farmers build off of these existing programs and initiatives. Suggested improvements would likely better accommodate the needs of this group of farmers and provide new ideas for programs specific to the circumstances facing new and beginning farmers.

The ITF's investigations resulted in policy and program suggestions in three broad areas:

1. Encouraging Private Landowners;
2. Promoting Government Programs and Services; and
3. Engaging Private Investors.

SECTION I

Encouraging Private Landowners

Individual, non-farming landowners who may own a farm, farmland or farmable land present excellent candidates to lease or otherwise make their land available to new and beginning farmers These individuals may be retired farmers, widows (or widowers) of farmers, other family members who have inherited a family farm, people who have purchased a farm or recreational property that could be farmed, but do not farm themselves, or homeowners (primary residence or second home) with acreage that contains farmable land.

There are numerous benefits to these landowners to make their land available for farming including retirement or additional income, maintaining eligibility for current use property tax programs, keeping the land from becoming overgrown, achieving certain conservation and stewardship objectives, and promoting local agriculture. The ITF looked at programs and incentives to encourage these landowners to make their lands available, specifically to new and beginning farmers. It should be noted that some of the suggestions presented were crafted by the task force with new and beginning farmers in mind, but they could benefit all farmers in their land access challenges.

LEASING

Leasing farmland may be the easiest and best opportunity for cash and credit-strapped new and beginning farmers to access land for their operations in the region. However, in New England, as elsewhere, farm leases typically run on a year-to-year basis. Leases often renew, but it is not guaranteed. The prospect of surrendering the leased premises after one year can influence the farm practices utilized by the tenant farmer (as well as the farm family's investment in the business and community). A one-year lease engenders the need for the farmer choosing practices most conducive to short-term profits rather than, for example, the long-term health of the soil. Uncertainty about whether the farmer may remain on the leased premises the following year diminishes confidence. The annual renegotiation of a one-year lease increases transaction costs between the landowner and tenant. While sustainable farming practices and longer-term leases have gained traction in New England, the one-year lease remains the norm.

Long-term leases can meet the needs and objectives of tenant farmers. As viable alternatives to ownership, a long-term lease can help new and beginning farmers gain access to land, despite lack of capital or experience. This is an especially important characteristic at a time when the average age of landowners is rising alongside the demand for land resources and land prices. Long-term leases foster sustainable agricultural practices. In turn, a farming operation with a long-term lease is more likely to benefit local and regional economies. Increased effort and additional planning goes into the formation of a longer-term lease, but it is well worth these upfront costs. Confidence ensues on the part of the landowner and tenant. A more sustainable landlord-tenant relationship naturally results from this stability.

While none of the New England states, with one narrow exception discussed later, restrict the length of a lease such as is the case in some Midwestern states (e.g., North Dakota: 10 years, Wisconsin: 15 years, Iowa and South Dakota: 20 years), there are some state laws in the region that may frustrate the use of longer-term leases.

Each New England state has adopted a "statute of frauds" requiring certain types of contracts to be in writing.[4] The specific language of each law differs, but in each of the New England states contracts for the sale of interests in land and contracts that cannot be fulfilled within a one-year period fall under these statutes and must be written. Because agricultural land leases transfer land interests and especially when they extend beyond the one-year term, they should be written to comply with the statute of frauds.

All but Maine extend this protection even further. For example in Connecticut, state law requires that leases exceeding a one-year term or leases providing "for the renewal thereof or an option to purchase" must be written, executed and recorded.[5] A similar requirement is found in Vermont and Rhode Island law. New Hampshire and Massachusetts set the requirement for recording a lease at seven years or longer.

The requirement that leases beyond a year or in some cases beyond seven years be written, executed and recorded may deter landowners from offering leases of a length longer than the trigger.

The one instance of state law in New England limiting the length of a lease is an odd one. The statute defining "development rights" within the context of Connecticut's Farmland Preservation Program specifically excludes the right to lease the property for a 25-year term or less from the bundle of development rights the program acquires when purchasing an easement.[6] In other words, farmers who sell development rights to the state may still lease their land for up to 25 years. The law is silent with respect to leases for terms longer than 25 years. However, officials with the Connecticut Department of Agriculture have interpreted this provision to limit leases on farmland in the state to 25 years or less.

Here are some specific suggestions:

- **State income tax credit incentive to lease land to new and beginning farmers.** Provide a state income tax credit to landowners who lease land to a qualified new and beginning farmer. Base the calculation of the amount of the income tax credit received on the property taxes paid by the landowner on the land subject to the lease. Linking the income tax credit to the property taxes paid by the landowner and not to the lease payment will ensure that this incentive does not have the unintended result of placing upward pressure on farmland rental rates.

  The ITF recognizes the importance of property tax revenues to local communities, even those already limited taxes paid on land enrolled in the various current use or preferential assessment property tax programs in the region. A state income tax credit to encourage the leasing of land to new and beginning farmers will ensure that any such incentive is revenue-neutral to local communities. Eligibility for the income tax credit should be predicated on leasing eligible farmland to qualified new and beginning farmers for a minimum period of time. For example, the ITF suggests that there be a minimum acreage limit of 2 acres of statewide important farmland soils or better, that the definition of a qualified new and beginning farmer be that used by USDA, and that the minimum lease term be 5 years. The tax credit would only be awarded for each year that indeed the land was leased under such a lease.

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[4] Conn. Gen. Stat. § 52-550; Mass. Gen. Laws ch. 259, §1; Me. Rev. Stat. tit. 33, §51; N.H. Rev. Stat. § 506:1-2; R.I. Gen. Laws § 9-1-4; Vt. Stat. tit. 12 § 181.

[5] Conn. Gen. Stat. § 47-19.

[6] Conn. Gen. Stat. § 22-26bb.

The ITF suggests a minimum acreage of 2 acres for this program to encourage home owners with large house lots that may include eligible farm soils to consider renting some of their excess land to new and beginning farmers. There is growing interest in stimulating farming in urban and suburban areas, which may create opportunities for new and beginning farmers in settings that would not attract established farmers. Recognizing that some of this more suburban/urban land may not be enrolled in or be eligible for a state's property tax exemption program, the ITF suggests that states consider a per acre and per credit cap to enable all eligible landowners to participate regardless of the amount of the property tax they pay. For example, the program could cap the income tax credit at not-to-exceed $100/acre and/or a total credit of $10,000. This would enable landowners who are not in a current use or preferential assessment property tax program to participate, yet at the same time not unduly restrict the landowner in such a program that has a large farm to rent.

Both Nebraska and Iowa have state income tax credit programs to encourage agricultural asset owners to rent to qualified new and beginning farmers. However, in both cases, the tax benefit is based on the value of the lease rather than the property taxes paid on the leased land.

- **Leasing land to new and beginning farmers through the existing State Use Value/Preferential Property Tax Programs.** Allow for or encourage, where the option already exists, property tax exemptions on farm buildings when leased to a qualified new and beginning farmer. For example, Vermont exempts farm buildings on land leased to farmers from all property taxes. The leased land must be enrolled in Vermont's use value appraisal program. To be eligible for the exemption, the property must be leased for at least a three-year period.[7]

- **State tax incentives to sell land to new and beginning farmers.** Provide a tax incentive to encourage landowners to sell farms and/or farmland, whether encumbered by a conservation easement or not, to qualified new and beginning farmers. Depending on the state, potential incentives could include: a reduction in the state capital gains tax applied on any such sales, the real estate recording fees, or the real estate transfer tax.

LEASE-TO-OWN

Lease-to-own strategies provide a path to ownership. For new and beginning farmers who do not have access to family-owned lands or the capital and credit to purchase a farm outright, this can be an attractive option. Just as long-term leases provide a level of certainty for the lessee to invest in the property, a lease-to-own agreement gives the farmer the opportunity to develop and implement long-range plans for the farm resources and business. Such agreements offer farmers the prospect of future ownership of the asset and, depending on the details, a feasible way to build equity.

[7] Vt. Stat. tit. 32 §§ 3752, 3755 and 3756.

Lease-to-own is a broad term covering a variety of arrangements with the common denominator being that they provide an option or opportunity to gain ownership of the asset in the future without a major upfront outlay of cash. The level of certainty about the future purchase, the size of the payments relative to the total cost, the extent to which lease payments purchase equity, and the ways that changed plans and circumstances are handled and managed can vary.

Lease-to-own can be an attractive option. As with many transactions, the devil is in the details. The lease must be carefully crafted to reflect the intent and understanding of both parties, and to comply with all legal and tax implications of the terms.

There are two basic categories. One is a lease with an option to purchase. In a lease with option to purchase, the price and terms of the purchase are set forth in the lease. The option may run for the lease term or a portion thereof. With a "straight option" the parties enter a buy-sell relationship at the exercise of the option. The tenant can compel the owner to sell at a fixed or determinable price. With a "right of first refusal," the owner is prevented from selling to a third party without first offering it to the tenant, typically at the same price offered by the other party.

The other is a lease purchase agreement. This is a commitment to purchase the property at some point. For both parties there are financial and tax implications of lease purchase agreements.

Another distinction within the lease-to-own model is critical. This pertains to whether or not the lease payment is applied toward the purchase. In the case where the lease payment is not applied toward the purchase, the income to the landowner is treated as ordinary income. The tenant may deduct the lease payment as a business expense. When a portion of the payment goes toward the purchase, this is seen as a transfer of equity. The IRS treats such arrangements as an installment sales contract. Specific tax laws apply.

An essential component of all lease-to-own agreements should be clear language on the expectations and performance of all parties to the agreement. Tenants must be confident that they have the right or opportunity to eventually benefit from their stewardship of, and investment in, the farm. Owners must be confident that their property is well cared-for during the transition. Both parties must feel comfortable with how the price and fees are negotiated.

- **Encourage lease-to-own provisions.** Government and nonprofit technical materials and resources geared to non-farming owners of farmland should encourage lease-to-own in farm and farmland leases where appropriate.

- **Include clear language and benchmarks in agreements.** These should articulate the terms of lease-to-own agreements, the timeframe for executing the purchase, the treatment of rents paid toward the purchase and provisions for recouping any equity in the property if the option is not exercised. In particular, provisions of the agreement should:

  – Clearly articulate performance criteria and deadlines for both owner and tenant.

  – Allow for payment over time to avoid the need for significant personal capital or high financing costs;

  – Provide security of the future option so there are no surprises for either party;

– Provide opportunities for the lease-purchase to build equity, so that the deal is more than just a postponement of the need to make an unaffordable investment;

– Include a fair distribution of the risks related to possible changes in plans or circumstances of either of the parties, so that a farmer's investment is not totally lost if the deal falls through yet a landowner is not forced to sell or mortgage property to repay farmer equity should the farmer decide to walk away.

- Incorporate lease-to-own arrangements in the requirements for eligibility for the State income tax credit incentive to lease land to new and beginning farmers.

Note: *Lease-to-own arrangements involving land trusts as the owner/seller will be frustrated by the current restriction in FRPP on land trusts applying directly to the program to sell agricultural conservation easements on properties they own. See comments on this subject in the section on Purchase of Agricultural Conservation Easement Programs.*

TRANSFER OF FARMING RIGHTS

As described in the California Farmlink's publication, *Farmers' Guide to Securing Land*, the Transfer of Farming Rights (TFR) is "…a deed restriction that a farmer would purchase from a landowner in order to secure the right to farm (the property) in perpetuity." Like a mineral right, the farming rights to the land would be severed from the fee-simple interest in the land and owned by another party to be used, sold or transferred. While the ITF could not find any actual examples of a TFR in practice, we believe the concept has merit and is worth further exploration if not tested on a pilot basis. The concept may in particular be of value to landowners with large lots that contain farmable soils that are currently underutilized. For new and beginning farmers it would provide an opportunity to access land at a fraction of the cost of buying the land in fee, yet they would have the security to invest in the soil and the infrastructure on the farm. However, since the ITF could not find any local examples of this technique in use, it urges caution in its application. The potential for conflicts between the landowner and the farmer with the farming rights are great and should not be taken lightly. The ITF notes that the true test of the TFR will be when the farming right or the property is sold and the original parties to the arrangement are no longer involved.

- To avoid potential conflicts between landowners and farmers with farming rights, it is highly recommended that a TFR be surveyed and recorded in the land records and that a 3rd party steward, like a land trust, be identified and granted stewardship responsibilities to monitor the use of the farming right, to supervise any subsequent sales of the farming right and to resolve any disputes associated with the exercise of the farming right.

SECTION II

Promoting Government Programs and Services

The task force recognized that overcoming the challenges facing New England's new and beginning farmers to access land, especially land ownership, will require the development and expansion of government programs with this objective in mind. These initiatives range from securing capital and credit to business planning to tailoring existing programs to better address the needs and circumstances of new and beginning farmers. Following are specific suggestions in several categories.

Access to Capital and Business Planning:

- **Improve access to capital for land purchases.** Develop programs or set-asides within existing programs to provide capital or loan guarantees to qualified new and beginning farmers to purchase land. See, for example, the Iowa Beginning Farmer Loan Program and the New Brunswick, Canada New Entrant Farmer Loan Program.

- **Provide business planning assistance and Farm Viability Programs.** In interviews with farmers "graduating" from the farm incubator at the Intervale Center in Burlington, Vermont, the business planning assistance provided through the Vermont Farm Viability Enhancement Program was often cited as a key to their successful transition to their own farm. The Massachusetts Farm Viability Enhancement Program provides similar services. It is important that new and beginning farmers have access to these programs and all their features and benefits, even if they are leasing farmland. Farm business planning courses and programs should adequately cover land acquisition, leasing arrangements and securing credit.

Transition Assistance:

- **Provide a State Investment Tax Credit to assist with the establishment of new farms.** To help new and beginning farmers start farming operations, provide a state income tax credit for the purchase of equipment and infrastructure associated with establishing a new farming operation during an initial start-up period. For example, this benefit could be offered to qualified new and beginning farmers during the first five years of a new operation.

- **Provide a State sales tax exemption to assist with the establishment of new farms**—To help new and beginning farmers start farming operations, exempt from the state sales tax the purchase of equipment and infrastructure associated with establishing a new farming operation during an initial start-up period. For example, this benefit could be offered to qualified new and beginning farmers during the first five years of a new operation.

State-Owned Farmland:

- **Provide access to State-owned farmland.** Make it state policy that all state-owned vacant, farmable land be made available for farming on a lease or license basis and that a preference or target percentage of the land be set for new and beginning farmers.

- **Make it State policy that all state-owned farmland be set aside for farm uses.** And, if sold, sold only for farming purposes and protected with the easement document used by each state's Purchase of Agricultural Conservation Easement program.

Purchase of Agricultural Conservation Easement Programs (PACE):

- **Fully Fund State PACE Programs.** In a region where land values on the open market are out of the reach of all but a few farmers, state and local farmland protection programs provide a foundation of permanently protected land for future agricultural pursuits. While this land may not all be immediately available and accessible to new and beginning farmers, without this pool of protected farmland the opportunities for new and beginning farmers would be extremely limited.

- **Include an Option to Purchase at Agricultural Value (OPAV) in all State PACE programs**—The experiences in Massachusetts and Vermont have shown that OPAV does keep protected farmland in the hands of farmers and in active agricultural use. In the end, whether it offers an immediate avenue for land access for new and beginning farmers or not, the provision provides insurance for the public's investment in farming and farmland. See the Land Access Project report, *Does the Option at Agricultural Value Protect Farmland for Beginning Farmers? A Policy Analysis* at www.landforgood.org.

- **Ensure that PACE programs address the needs of new and beginning farmers.** Develop entirely new PACE-like programs or special offerings within existing PACE programs geared specifically to new and beginning farmers. Such programs could condition access to capital to purchase farmland with the protection of the land with an agricultural conservation easement. The Delaware Young Farmers Farmland Purchase and Preservation Loan Program, the Carroll County, Maryland Critical Farms Program and the New Brunswick, Canada New Land Purchase Program are offered as examples for consideration.

- **Develop a "Starter Farm" program within existing PACE programs.** This option would target the protection of smaller farm properties with housing. To encourage that the property remain as a stand-alone farm, require that the house remain with the farm. To maintain its future affordability consider restricting the size of the house; requiring that the house only be used as housing for the farmer or farm employees; appraising the house in any re-sale on the size of the house and not its amenities; appraising the house based on an index of the median house price in the local area and/or limiting the re-sale price of the farm to its assessed agricultural value. In addition, such "starter farms" would include an OPAV in the agricultural conservation easement.

- **Purchase retroactive OPAVs on previously protected farms.** Institute a program that buys an OPAV on farms already conserved with traditional easements that did not include OPAV. Target this program to farms that are most at risk for estate conversion and that offer ownership possibilities for new and beginning farmers.

- **Create a Farm Viability Program specifically targeting previously protected farms.** Modify, add to or create a Farm Viability Program that provides business planning assistance and matching grants for capital investments in farm infrastructure to new owners of PACE-protected farms. Such a program could provide needed financial assistance to new and beginning farmers who have purchased older, protected farms that may be less desirable to established farmers and are in need of rejuvenation. The Massachusetts APR Improvement Program is offered as an example for consideration.

Federal Farm and Ranch Lands Protection Program (FRPP):

FRPP partners with state, local and private farmland protection programs to protect land with agricultural conservation easements. It is administered through the USDA NRCS.

- **Fully Fund FRPP.** Since its creation in 1996, FRPP has become an important partner in the protection of farmland in New England. As noted above, the collective efforts of state and local PACE programs in the region along with FRPP have secured a foundation of permanently protected land for future agricultural pursuits.

- **Ensure that FRPP addresses the needs of new and beginning farmers.** Remove the current restriction in FRPP on land trusts applying directly to the program to sell agricultural conservation easements on properties they own if these properties are designed to advance creative solutions to land access for new and beginning farmers.

- **Remove the current restriction in FRPP on future subdivisions of protected farms.** Flexibility needs to be maintained to allow protected farms to adapt to changing agricultural circumstances and needs. The appropriate subdivision of large, previously protected farms (e.g.: former dairy farms) can be an important tool for providing access to land for new and beginning farmers.

Farm Services Agency (FSA):

- **Make FSA Inventory Lands available to new and beginning farmers.** The FSA should work with FRPP to place an agricultural conservation easement on all farms in its inventory and then FSA should give a preference to new and beginning farmers to purchase such properties when they are put up for sale.

- **Encourage FSA borrower training programs to include land acquisition education.**

Ground Leases:

In a ground lease, the tenant rents the ground but owns some or all of the infrastructure on that ground. In agriculture, ground leases are long-term leases of land through which a tenant is able to invest in and own a dwelling and/or farm structures on the rented land through purchase or construction of the improvements. Although they are more common in commercial real estate than in agriculture, ground leases offer a variety of potential benefits when applied to farmland. Reforms to public programs could make ground leases more attractive and practical.

Agricultural ground leases provide a way for farmer tenants to access land without making a major capital investment (in the land), yet gain sufficient security of tenure to justify investment in building or buying related buildings and other farm infrastructure. They also build equity in the improvements they own. By design a ground lease is intended to be a long-term agreement; at a minimum 10 years and typically longer, with a maximum of 99 years. In addition, specialized agricultural ground leases have been created with resale price restrictions designed to keep entire farms (land and buildings, including a homestead) affordable to future farmers, and with other requirements and restrictions designed to ensure that the farm remains a working farm for the benefit of the surrounding community and region.

In these models, when the farm is transferred the exiting farmer sells the infrastructure to an incoming farmer at its appraised agricultural use value at the same time that the new farmer enters into a ground lease with the land trust that holds title to the land. (See Equity Trust's *Preserving Affordable Working Farms* Fact Sheet.)

Although agricultural ground leases often serve as stand-alone tools for the preservation of working farms, in certain situations they can also be used in conjunction with agricultural conservation easements to address particular needs that the easement doesn't address. For example, a nonprofit owning both easement-protected farmland and adjacent housing can use a ground lease to make the housing available, and affordable, to the farmer who leases and works the farmland. This can be of particular value for new and beginning farmers who may otherwise not be able to take on a farmland for lack of access to affordable housing.

- **Ensure that stewarding organizations utilizing this technique are eligible to apply to PACE programs as the applicant under both state and federal eligibility policies.**
- **Regarding future subdivision.** The separation of ownership under this technique, where the farmer owns the buildings and the NGO owns the land, should not be considered a "subdivision" and that such subdivisions should be allowed under current federal and state easement programs.
- **Allow equal access to federal and state grant and financing programs to farmers holding long-term ground leases** with equity in the farm infrastructure, equal to farmers who have full ownership, even though a NGO holds title to the land.

SECTION III

Engaging Private Investors

Given constraints on State governments to fully address the land access needs of new and beginning farmers, including limited funds and the need to serve all agricultural sectors, the ITF sees room for mission-driven investors, land trusts and foundations to play an increasingly larger role in offering new and beginning farmers access to land.

However, it is important to note that such private investment will only truly benefit farmers in general and new and beginning farmers specifically if investors are willing to accept a return on their investment tied to the margins farmers are able to achieve on the land while still maintaining a sustainable livelihood. Investment expectations that are dependent on the increasing value of land and/or market rates of return will inevitably make farmland less affordable and accessible to farmers.

- **Encourage land trusts to focus (some) projects on new and beginning farmers.** Land trusts can invest in farmland and function as a broker to package transactions that purchase land, sell an agricultural conservation easement and then target new and beginning farmers to purchase the protected land either outright or in a lease-to-own arrangement. See, for example, the Vermont Land Trust Land Access Program, the Maine Farmland Trust Buy, Protect, Sell Program.

Note: *Lease-to-own arrangements involving land trusts as the owner/seller will be frustrated by the current restriction in FRPP on land trusts applying directly to the program to sell agricultural conservation easements on properties they own. See comments on this subject in the section on PACE programs.*

- **Secure larger farms for lease to multiple new and beginning farmers.** In addition to incubator farms, non-government organizations and impact investors could purchase larger farms to be subdivided for use by multiple new and beginning farm operators. These "umbrella farms," perhaps with common facilities and co-op opportunities, would offer farm operators a long-term tenure option to the more temporal arrangements provided by incubators. The parent entity would realize a stable income stream from multiple (but realistic) lease payments.

- **Incorporate lease-to-own agreements in farmland investments.** Including a lease-to-own provision as part of an investment strategy will enable private investors to realize a reasonable rate of return on their investment while facilitating the transfer of ownership to a farmer at an acceptable agricultural value.

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Land For Good is a nonprofit organization. Our mission is to support the farmers, landowners and communities that keep New England's agricultural lands working.