



FARMLAND FOR FARMERS

WORKING FARM EASEMENTS AS A TOOL TO KEEP NEW YORK FARMERS ON THE LAND



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EXECUTIVE SUMMARY

Agriculture is an integral part of New York's economy, culture, and landscape. The state's 35,500 farms keep over 7 million acres of land in agricultural production,¹ support more than 160,000 jobs, and generate in excess of \$39 billion annually.² As a growing number of farmers prepare to retire, it is critical that young farmers are positioned to step up and carry on this legacy. Unfortunately, New York's young farmers are struggling. Survey data suggests that finding affordable farmland is their toughest obstacle.

The following report focuses on the issue of land access for farmers in New York and the use of working farm easements with preemptive purchase rights to ensure the availability of affordable farmland for generations of New York farmers to come.

While family farms still serve as the economic engine of rural communities across the state, the future of New York's agricultural economy is at risk. Between 1950 and 2012, New York lost more than half of its land in farms and nearly three-quarters of its family farms.³ Nearly half a million acres have been lost to development since the 1980s alone.⁴

To stem the decline of farmers, new farmers are needed. The average age of farmers in New York is 57.⁵ Nearly 30 percent of farms are managed by farmers who are 65 years or older, and the vast majority of these farmers do not have a farm operator under 45 working alongside them in their business.⁶

Access to land is the number one barrier to entry facing the next generation of farmers in New York.⁷ Farmers cannot compete with the high prices and pace of the real estate sales market in New York. Meanwhile, the cost of renting land is increasing, security for farmers on rented acres is tenuous, and hopes of future ownership are slim.

New York is a leader in protecting farmland from development. The Farmland Protection Implementation Grant Program (FPIG), which was established to sustain New York's farm economy and the land base associated with it, has had a significant impact on conserving the most valuable and threatened farmland across the state in its more than twenty-year history. Since 1996, New York taxpayers have invested over \$145 million to protect 61,000-plus acres of viable agricultural land on more than

More information about FPIG, including grant opportunity materials, can be accessed at www.agriculture.ny.gov under Agency Divisions > Land and Water.

240 farms—keeping these acres free from development and compensating farmers in cash.⁸

Non-farmers are driving up the price of protected farmland. Purchases of farms—both protected and not—as second-home properties are on the rise, creating a real estate environment in many parts of the state in which the value of land far exceeds what a farmer can afford. Once land transitions out of farmer ownership, it rarely goes back.

Protected land may not be available to farmers. Traditional agricultural conservation easements protect land from residential and other development pressures, but do not guarantee that an individual who earns their income from farming will own the protected land in the future. As pressure from non-farming residential owners and second-home buyers mounts in areas of the state with high amenity values, anecdotal evidence suggests that farmland protected under FPIG is at risk of falling out of farmer ownership as it sells to the next owner.

Working farm easements are a proven way to keep farmers on the land. Working farm easements contain additional restrictions, such as preemptive purchase rights, that strengthen traditional easements. These easements not only protect land from development, but also help ensure that protected land is sold at its agricultural use value to future farmer owners. Working farm easements have been the key to keeping hundreds of protected farms in farmer ownership in Massachusetts and Vermont, and are being implemented by an increasing number of New York land trusts.

Working farm easements are worth the cost. Working farm easements cost more than traditional conservation easements because farmers must be compensated for the difference between what they could sell the land for to a farmer and what a non-farming residential owner would pay. But the price is worth paying: this added cost is in the public interest because working farm easements keep New York's productive agricultural lands in the hands of farmers who will continue to produce food for the region and energize local economies.



About the National Young Farmers Coalition

The National Young Farmers Coalition (NYFC) represents, mobilizes, and engages young farmers and ranchers to ensure their success. Since 2010, NYFC has launched 41 farmer-led chapters across the United States, including five in New York, and has built a grassroots base of more than 140,000 individuals.

NYFC helps young farmers become leaders in their communities through local chapter organizing, ensuring they have a seat at the table in local, state, and national policy decisions. We address structural barriers facing young farmers through farm bill advocacy, USDA program reform, and by training key stakeholders and service providers to better serve the next generation. NYFC also provides business services to young farm-

ers, offering tools, resources, and technical assistance to help them navigate business challenges and seize market opportunities.

As a coalition of farmers, access to affordable land is at the heart of our work. Over the past four years, NYFC has worked closely with land conservation stakeholders nationwide to build awareness, share skills, and catalyze projects that help farmers access and stay on the land. We strongly believe that farmland conservation is a critical tool to solving the challenges of farmland access. Although NYFC is a national organization, our roots are in New York—NYFC was founded by three farmers in New York's Hudson Valley and we have established our national headquarters here.

Learn more about the Working Farm Protection Act and NYFC's New York policy campaign on our website, youngfarmers.org/states/new-york-campaign/.

New York has taken two important steps towards protecting farmland for farmers.

In Round 16 funding for the FPIG Program, released in May 2018, Governor Andrew Cuomo and New York State Department of Agriculture and Markets (NYSDAM) Commissioner Richard Ball included preemptive purchase rights as eligible costs for the first time.⁹ In addition, Governor Cuomo recently enacted the Working Farm Protection Act, which was championed by Assembly member Didi Barrett (D-106) and Senator Patty Ritchie (R-48), and had support from a broad coalition of stakeholders. The Act ensures that preemptive purchase rights and similar provisions are permanently eligible for funding through FPIG.

Working farm easements should be the priority and standard for all publicly funded farmland conservation projects in New York State. The State now has an opportunity to build on these advancements by:

- Prioritizing FPIG projects that include farmer ownership and affordability provisions;
- Supporting retroactive inclusion of these provisions in previously-funded projects; and,
- Facilitating sharing of information and best practices among conservation organizations.

By utilizing state funds to purchase and prioritize working farm easements, New York will make an investment in its agricultural economy and send a clear message to farmers that ensuring a future for agriculture in the state is a priority.

“My fiancé and I have been farming for eight seasons in the Hudson Valley, and we started our business four years ago. In that time, we’ve had three different land leases—moving our operation every winter. Constant change and instability is exhausting, and while we are now in a better leasing arrangement, we still struggle with how to build equity in our farm business when we don’t have long-term land tenure. We would love to purchase land, but we are competing with other buyers who have a lot more money up front than we do. A working farm easement would put us in a fairer position to buy land and use it for its best and highest purpose. Without it, we really can’t compete.”

**BRYN ROSHONG, CO-OWNER AND OPERATOR OF SOLID GROUND FARM,
KINGSTON, NEW YORK**

NEW YORK'S FARMLAND AND FARMERS ARE DISAPPEARING



As of 2012, only 53% of all farm operators in the state listed farming as their primary occupation.²⁰

Visit our website, youngfarmers.org/newsroom/reports/, to access more NYFC reports, case studies, and guidebooks.

In 2012, Zack and Annie Metzger moved to New York and began searching for a farm. After years of building a business and honing their farming skills in the Midwest, they knew they wanted to put down roots in the Hudson Valley. Around the same time, Rich and Linda Bulson, who had been farming for decades just outside of Troy, New York, were ready to retire and sell their farm.

The Bulsons represent a growing demographic. A recent report from the American Farmland Trust and Land For Good found that New York's ten thousand farmers over the age of 65 own or manage more than two million of the roughly seven million acres of agricultural land in the state. What will happen to their land when they retire is uncertain—92 percent of those farmers do not have a farm operator under the age of 45 working alongside them, demand for farmland from non-farming buyers is increasing, and young farmers are struggling to afford land.¹⁰

For young farmers like Annie and Zack, finding secure land tenure is the primary challenge they face. In 2017, the National Young Farmers Coalition (NYFC) surveyed more than 3,500 young farmers and ranchers across the country and published the findings in our report, *Building a Future with Farmers II*. Whether they came from a farm family or were first-generation farmers, respondents from New York, and across the country, cited land access—particularly finding and affording land on a farm income—as their top challenge. Land access was not only the top challenge facing current farmers, but the primary reason individuals have left farming and the biggest barrier preventing aspiring farmers from starting a farm business.¹¹



“Starting a small business is hard, no matter the business, and starting a farm business is impossible without access to reasonably priced land. Our farm dream was made possible through a conservation easement and the further price reduction offered by a preemptive purchase right. We feel that we are doing the right thing for the next generation by being restricted to selling our farm to farmers someday, rather than being tempted to sell to the highest bidder.”

ANNIE AND ZACK METZGER, LAUGHING EARTH FARM CROPSYVILLE, NEW YORK

The challenge of finding affordable land is becoming more acute as farmland is increasingly valued for uses other than farming. Mirroring the nation as a whole, New York has been steadily losing high-quality farmland to development for decades.¹² Of the half a million acres lost since the 1980s, a quarter were classified as prime soils.¹³ This trend of high-quality farmland loss, particularly around urban areas, will continue as population growth brings farmers and cities closer together. As of 2012, 80 percent of all fruits, vegetables, and milk sales in New York came from farms in urban-influenced areas, where development pressure is greatest.¹⁴

Mapping the difference between farm real estate values and rental rates in New York shows that the closer a farm is to New York City, the more its value diverges from rental rates that farmers are able to pay.¹⁵ Good access to markets makes land desirable for farmers in these regions, yet farmland prices—even for land protected with conservation easements—are out of reach.¹⁶ According to USDA data, average real estate prices in New York rose by 124 percent in the last twenty years.¹⁷ In 2013, rent-to-value ratios from several parts of New York suggested that farmland—especially within a few hours’ drive from the major population center of New York City—was being valued significantly above its worth for agricultural production.¹⁸

The result of rising farmland prices, along with the widening gap between the cost of land and what farmers can afford, is that farmland falls out of farmer ownership. Over the last twenty years, the majority of counties in New York saw a decline in the number of owner-operated farms.¹⁹ As of 2012, only 53 percent of all farm operators in the state listed farming as their primary occupation.²⁰

The Bulsons’ farm will not become a part of this statistic, however. In 2013, Annie and Zack began building their business—Laughing Earth Farm—on the Bulsons’ land and closed on the purchase of the farm in 2015. A number of organizations came together to make this transition between farming generations possible, including the Agricultural Stewardship Association and Equity Trust. These two groups used state funds to purchase a conservation easement on the property and, because state funding was not available to cover the cost of the working farm easement at the time, used private funds to place a working farm easement on the farm in 2016. Together, these tools reduced the cost of the purchase for Annie and Zack to what they could afford, while the Bulsons received fair market value for the property that they had worked for decades and depended on for retirement.





“In Tompkins County, we have a strong agricultural land base and successful farming community. Traditionally, farmers have been able to pass their life’s work onto the next generation. However as older generations of farmers and landowners put their properties on the market, we are seeing more interest from non-agricultural buyers in acquiring farmland for its aesthetic value. As buying trends change, and we look to how best to keep farmland active in the Finger Lakes, we need to take advantage of all of the tools available to us. If we allow a significant transfer of farmland to people who will not keep that farmland active, it will have impacts on New York’s agricultural assets that will last generations.”

**DEVON VAN NOBLE, OWNER AND OPERATOR OF VAN NOBLE FARM,
TRUMANSBURG, NEW YORK**



THE CASE FOR FARMER OWNERSHIP

Farmers are the heart of New York’s agricultural economy. They steward the land, form the building blocks of local communities, and pass on generations of farm production knowledge. Protecting farmer ownership of land is critical to the continued well-being of New York’s agricultural industry.

A 2015 report from the Office of the State Comptroller, Thomas P. DiNapoli, discussing the importance of agriculture states that, “farms are an essential and diverse part of New York State’s economy, contributing significantly to employment, incomes and tax revenues across the Empire State.” That same report concludes that, “for economic, social and other reasons, a strong farming sector is critical to the Empire State.”²¹

Using 2012 data, a report from Farm Credit East found that New York’s farms generate \$5.4 billion in annual sales and support 77,000 on-farm jobs. Taking related industries, such as equipment dealers and manufacturers of agricultural supplies into account, the economic impact of farms in the state becomes \$39 billion and the number of supported jobs rises to 160,000.²² A 2012 report from Cornell found that the economic multiplier from farm and food manufacturing exceeded that of most other industries, meaning that money spent by farm and food companies supported more related businesses and created more economic benefits than money spent in other sectors.²³

We risk losing these economic benefits if we do not ensure farmer ownership of farmland. Non-farmer ownership of land can open the door for numerous unintended impacts—farms under such ownership tend to become permanently unavailable for purchase by farmers because the price is driven up beyond what a farmer can afford; farm structures are neglected; and the land may go fallow or be underutilized because the landowner is not dependent on commercial agriculture for their income. As farmers lose ownership of land, rural communities and the farm economy as a whole are affected. Without long-term land tenure, farmers lack the necessary control and stability to invest in soil health, additional acreage, perennial crops, farm structures, or equipment. This uncertainty leads farmers to eventually move or leave farming altogether, and the loss of local economic activity can cause businesses that rely on farming to leave as well.

As Neil Hamilton writes in *The Future of Family Farms*, “Land ownership provides the stability, the autonomy, the opportunity for long-term planning and investment, and the wealth creation potential that is central to our agricultural history. Farmers who own their land have more security and autonomy.”²⁴



“Here in St. Lawrence County, we are losing productive acres every day to development and we often see farms selling for a quarter million dollars or more. If we want to continue to eat food grown in the communities in which we live, we need to protect this common good, and we need to support farmers and recognize their public service. New Yorkers pursuing a career in farming are the seeds of our rural communities, and just as land needs farmers to nurture it, farmers need land to own for their farm businesses to grow and be successful. Conservation easements that include affordability provisions can help keep our rural communities strong by ensuring that farmland stays in farmer ownership forever.”

CATHERINE BENNETT, OWNER AND OPERATOR OF MILKWEED TUSSOCK TUBERS, HEUVELTON, NEW YORK





NEW YORK'S LEGACY OF FARMLAND PROTECTION

Agricultural lands are irreplaceable assets. On a community scale, as farmers lose ownership—and the necessary security for their businesses—the farm economy as a whole is affected.

In 1992, Governor Mario Cuomo and the New York State Legislature passed the Agricultural Protection Act, which created the State's farmland protection program and declared that agricultural lands are irreplaceable state assets.²⁵ Since 1996, when the program began authorizing the purchase of agricultural easements, New York taxpayers have invested over \$145 million to protect more than 61,000 acres of agricultural land from development through the purchase of development rights.²⁶

Under the program, farmers are compensated for the value of the development rights purchased by land conservation organizations, which can amount to as much as 60 percent of the value of the land, or higher in certain circumstances.²⁷ Not only is the land kept free from development in perpetuity, but farmers are utilizing the funds to strengthen their businesses, transition farms to the next generation, make infrastructure improvements, pay off debts, and save for retirement.

New York's Farmland Protection Implementation Grant (FPIG) Program has received its highest levels of funding yet under current Governor Andrew Cuomo's administration, including targeted funding for farmland protection in the rapidly developing Hudson Valley and for New York dairy farms under threat of conversion to non-farm uses. Since the Governor took office in 2011, the state has invested more than \$62 million in 82 farmland protection projects statewide—more than a third of the total spending in its 20-year history.²⁸

Current New York State Department of Agriculture and Markets Commissioner Richard Ball has prioritized efficient and effective spending of this historic funding, regularly engaging the stakeholder community and working to streamline the application and review process so that projects are completed in less than two years. In addition to funding for farmland protection, Governor Cuomo's administration has demonstrated commitment to the future of New York's agricultural economy through

various initiatives designed to support farm viability, such as the New Farmers Grant Fund and Veterans Farmer Grant Fund.

Despite what has been achieved to protect farmland from development in New York, the State's farmland—and the agricultural economy associated with it—is at risk. Significant acreage remains yet to be protected in New York, and even the land that has been protected with a farmland conservation easement has not been secured from falling out of farmer ownership.²⁹

Paradoxically, land that has been protected for agricultural use is sometimes the most appealing to buyers who have no intention to farm. According to a 2006 report from the American Farmland Trust, which studied farmland protection programs mostly outside of New York, "there is a strong market...for the purchase of farm parcels for rural residential use. Indeed, the very existence of easement-provided preservation increases the attractiveness of such parcels for affluent and even middle-income buyers."³⁰ NYFC's 2013 report, *Farmland Conservation 2.0: How Land Trusts Can Protect America's Working Farms*, confirmed this—our survey of over 200 land conservation professionals around the country found that 24 percent of respondents had seen protected farmland taken out of production. These respondents identified non-farmers as the primary threat to the continued agricultural use of easement-protected farmland.³¹

The achievements of New York's farmland protection program represent a significant public investment in New York's agricultural economy. As demand and funding for the farmland protection program grows, this is a critical moment for New York to build on this legacy by using state funds to protect farmland *and* keep farmers on the land.



WORKING FARM EASEMENTS PROTECT LAND FOR FARMERS

As land values rise due to interest in farmland from non-farming buyers and a growing number of landowners prepare for retirement, farmers and land trusts are utilizing a new tool—the working farm easement—to keep protected land in farmer ownership.

See the Glossary on page 20 for a definition of this phrase and other terms.

Working farm easements include additional restrictions, referred to in this report as **farmer ownership and affordability provisions**. These voluntary provisions, such as preemptive purchase rights, add a layer of insurance to traditional agricultural conservation easements by keeping protected farmland at its agricultural use value and restricting future buyers to farmers earning their income from commercial agriculture.

“The Columbia Land Conservancy uses a variety of different tools and techniques to help farmers gain long term and secure access to farmland. As land prices in our region continue to rise, we believe preemptive purchase rights will become one of several critically important mechanisms we can use to help ensure that our best and most productive farmland remains affordable for the farmers who need it.”

**PETER PADEN, EXECUTIVE DIRECTOR,
COLUMBIA LAND CONSERVANCY**

PREEMPTIVE PURCHASE RIGHTS

Preemptive purchase rights are farmer ownership and affordability provisions that land trusts are utilizing in New York, and that have a proven track record of keeping protected land in farmer ownership in neighboring states. Under a working farm easement with a preemptive purchase right, the landowner must sell the farm to a qualified farmer at the time of sale. If no farmer is found, or if the sale is proposed at above the agricultural use value of the property, the easement holder—typically a land trust—has the right to step in and purchase the land at its agricultural use value or assign the purchase to a qualified farmer buyer.

An appraiser determines the value of a working farm easement, which includes the cost of purchasing the development rights plus the cost of the preemptive purchase right. The value of development rights are what an appraiser determines the difference to be between what land would sell for on the open market with no restrictions and what it would sell for once the development rights have been removed but agricultural activities are still allowed. The cost of a preemptive purchase right is the further difference between the value of the land after the development rights have been removed and the property’s agricultural use value, or what a farmer can afford. For example, the full cost of a farm may be \$10,000 an acre. With the development rights removed and a traditional conservation easement in place, the value of the land may be lowered to \$5,000 an acre. With the preemptive purchase right included, the value of the land may be further reduced to \$3,000 an acre. The difference between \$10,000 per acre and \$3,000 per acre is the difference between what a residential buyer and a farmer can afford. Depending on the town, proximity to the city, and soil type, valuations will vary greatly.

WORKING FARM EASEMENTS IN NEW YORK

In late 2017 and early 2018, NYFC conducted phone calls with conservation organizations across New York to inform our understanding of how land trusts that are directly engaged in farmland protection activities are using working farm easements. Overall, the responses to our survey indicated that there is high demand for funding for this work and significant interest in utilizing public funds. Nearly 70 percent of land trust respondents were in support of making preemptive purchase rights an eligible cost in the State's farmland protection program, and, while a few did not have a position at this time, none were opposed. This support was also geographically diverse, coming from land trusts in seven out of ten New York economic regions, including Western New York.

Through our conversations, we found that land trusts are receiving a growing number of requests from farmers for assistance finding land, along with an increasing frequency of inquiries from landowners interested in putting easements on their land. In addition, we found that six land trusts have implemented, or are currently engaged in, working farm easement projects. Across the state, 20 projects with farmer ownership and affordability provisions have already been completed and at least ten more are currently in development. Land trusts reported utilizing preemptive purchase rights in projects for various reasons, including helping landowners to draw more equity from their land, making farmland more affordable for new farmers by decreasing the purchase price, and an overall recognition of the risk of losing both conserved and unprotected farmland to non-agricultural uses.

In addition to land trusts, farmers are also ready to embrace new tools for farmland protection. In the American Farmland Trust and Land For Good's Gaining Insights, Gaining Access project, all of the 67 farmers over the age of 45 without an identified successor who participated in the New York focus group wanted to see their land remain in farming; most were willing to look outside their family for a successor; and they were open to innovative approaches and strategies around farm transfer and succession.³²



Findings from NYFC's New York Conservation Organization Survey

LAND TRUSTS SEE WORKING FARM EASEMENTS AS AN IMPORTANT TOOL:

48% of respondents are experiencing an increase in farmers looking for land (11 of 23).

30% of respondents reported seeing protected land sold to non-farmers; they attribute this trend to real estate pressure from non-farming individuals purchasing estate properties and lack of interest from the next generation within the family (7 of 23).

57% of respondents indicated that they see working farm easements as an important tool for farmland protection and farmer ownership (13 of 23).

23 Organizations Interviewed, Including 21 Private Non-profit Land Trusts and 2 Statewide Conservation Advocacy Groups

LAND TRUSTS RELY ON FPIG:

15 land trusts rely on Farmland Protection Implementation Grant Program funds as one of their primary sources of farmland protection funding.

0 respondents are opposed to funding the cost of working farm easements through the state Farmland Protection Implementation Grant Program.

WORKING FARM EASEMENTS ARE GAINING GROUND:

6 land trusts have completed, or are in the process of completing, working farm easement projects.

20 working farm easement projects have been completed in the state; **10** more are in development.

Equity Trusts' Hudson Valley Farm Affordability Program, which is backed by a Hudson Valley-based foundation, has funded the cost of including preemptive purchase rights in many of the projects in the Hudson Valley, while others, particularly on Long Island, have been funded by private fundraising, donated easements, and payment-in-lieu-of-tax arrangements. New York land trusts, farmers, and local communities have found, and will undoubtedly continue to find, creative funding solutions to support the implementation of working farm easements. The availability of State funding for preemptive purchase rights greatly increases capacity in New York for more working farm easement projects. Prioritization of public funding for these projects would demonstrate the value the State places on keeping farmers on the land, likely attracting additional private dollars to this work.

“There are many challenges facing farmers in New York including development pressure in suburban areas and places like the Hudson Valley where my family farms. There is significant competition for prime land, which pushes up the cost of purchasing farmland. Affordability provisions are another tool to help ensure that protected farmland is used as farmland by farmers.”

ERIC OOMS, COLUMBIA COUNTY DAIRY FARMER AND VICE PRESIDENT OF THE NEW YORK FARM BUREAU

“The preemptive purchase right (PPR) can play a critical role in ensuring farmer access to farmland, and ensuring that protected farms remain affordable and in active agriculture. Private resources can and should continue to be brought to the table, but they need to be supplemented by public dollars if we are to reach more farms and bring this tool, and the positive impact it can have, to scale.”

JIM OLDHAM, EXECUTIVE DIRECTOR, EQUITY TRUST



WORKING FARM EASEMENTS IN POLICY: MASSACHUSETTS AND VERMONT

“Vermont should encourage and assist in...keeping conserved agricultural land in production and affordable for future generations of farmers.”

VERMONT HOUSING AND CONSERVATION
TRUST FUND ACT OF 1987



The challenge of accessing affordable farmland is not unique to farmers in New York State—farmers throughout the country face a similar barrier. Massachusetts and Vermont took action to address this threat to their agricultural economies more than a decade ago by targeting public dollars toward working farm easements that are designed to help keep farmland affordable for farmers. In these states, the farmer ownership and affordability provision known as a preemptive purchase right in New York is referred to as an option to purchase at agricultural value (OPAV).

WORKING FARM EASEMENTS IN MASSACHUSETTS

Massachusetts' publicly-funded efforts to permanently protect farmland began with the enactment of a 1977 law, which led the nation in establishing a first-of-its-kind program—the Agricultural Preservation Restriction Program at the Massachusetts Department of Agricultural Resources. In the forty years since its inception, the program has protected more than 906 farms on over 73,163 acres

The law established an Agricultural Lands Preservation Committee to evaluate Agricultural Preservation Restriction project applications. In the late 1980's, the Committee began including a provision in easements to respond to increasing development pressures, known as a right of first refusal. A right of first refusal is designed to give the holder of the easement, in this case the Commonwealth of Massachusetts, the opportunity to intercede in a proposed sale of protected land to a private buyer if the Commonwealth determines the proposed buyer will not keep the land in agricultural production. For properties with a right of first refusal, the Commonwealth could purchase the land directly, or assign its rights to do so to a third party, but the price paid had to match the original offer.

The cost of exercising the right of first refusal presented a limitation as real estate values rose, and in the early 1990's, Massachusetts began exploring the use of a new provision: the option to purchase at agricultural value. Since the state began requiring the use of option to purchase at agricultural value in 1994, approximately 615 farms have been protected by easements including the provision.

Now, when a property under the Agricultural Preservation Restriction comes up for sale, the owner submits a proposal to Massachusetts Department of Agricultural Resources that includes a proposed purchaser and supporting information to show that the sale will meet the requirements of the easement and the program. These requirements include that the proposed purchase, "is a farmer or new entry farmer and has provided a farm plan and farm resume sufficient to demonstrate the premises will be utilized to the fullest extent possible for commercial agriculture." In addition, the proposed purchase price must reflect the agricultural use value of the land. If Massachusetts Department of Agricultural Resources determines that the proposed sale does not meet the necessary requirements, the purchase can be assigned to a qualified farmer. If Massachusetts Department of Agricultural Resources is unsuccessful in finding a farmer to assign the purchase to, the original proposal may be allowed to move forward.

Since 1994, Massachusetts Department of Agricultural Resources has only had to step into the process and exercise the option to purchase at agricultural value six times on the 615 properties that have been protected by this program. In two of those cases, Massachusetts Department of Agricultural Resources assigned the purchase, and in four of those cases, the original proposal was allowed to move forward. In all of these cases, the option to purchase at agricultural value provision, like the easement itself, remains intact and will apply to any future proposed sale of those properties.



WORKING FARM EASEMENTS IN VERMONT

Farmland protection policy in Vermont started as a response to the rapidly changing pattern of development in the state in the 1980s. This development was seen as the cause of rising house prices and growing development pressure on valuable agricultural lands, as well as a threat to the rural character of the state.

The Vermont Housing and Conservation Board (VHCB) was established by the Vermont Housing and Conservation Trust Fund Act of 1987 and charged with not only protecting farmland and the future affordability of that land, but also recognizing the unique relationship in Vermont between farmland, forestland, housing, and historic preservation. The law, as amended, states that Vermont should, among other priorities, “encourage and assist in...keeping conserved agricultural land in production and affordable for future generations of farmers.”

To accomplish this directive, VHCB has worked closely with the Vermont Land Trust and Upper Valley Land Trust to develop a pipeline for program applications as well as shared responsibilities associated with stewarding protected farmland and facilitating future sales. Vermont Land Trust, Upper Valley Land Trust, local non-profit conservation organizations, and municipalities work with landowners to

“Without options to purchase at agricultural value, estate pressure on farmland could push important ag lands into non-farm ownership, and over time, farmers across Vermont might all be renters, rather than owning their farmland. Creating opportunities for farmers to access land at reasonable prices is a core tenant of what we are trying to do with our approach to conserving farmland. We want to see farmers have the long-term security of owning their land, which is why Vermont has strengthened our investments in farmland conservation and affordability through the use of options to purchase at agricultural value. This approach has put us ahead of the curve by providing an insurance policy in parts of the state where there is a strong agricultural economy and the development and estate pressure hasn’t shown up yet.”

TYLER MILLER, STEWARDSHIP DIRECTOR, VERMONT LAND TRUST

“I work on a dairy farm here in Cortland County and want to eventually buy land where I could build my own dairy operation. Unfortunately, farmland prices here are outside of what I could afford on a farming income. Risk and narrow profit margins are inherent to farming, but working farm easements help farmers to avoid putting all their capital into buying land—leaving more to invest in soil health, conservation practices, farm structures, livestock, and equipment. We should follow in the footsteps of our New England neighbors and help make farm ownership a possibility for the next generation.”

**LIZ PICKARD, TWIN OAKS DAIRY,
CORTLAND COUNTY, NEW YORK**

develop pre-applications, which are reviewed by VHCB’s pre-application committee. The full VHCB Board then decides which projects will move forward and receive funding. Since 1987, the VHCB has conserved 431,000 acres of agricultural and recreational lands and natural areas.³³

Early projects included right of first refusal provisions, but in 2003, VHCB adopted the use of the option to purchase at agricultural value to better ensure that state-funded agricultural conservation easements are effectively keeping conserved farmland available and affordable for future generations of farmers. VHCB’s 2016 policy guide for funding conservation of agricultural land states that, “The option to purchase at agricultural value is VHCB’s standard tool to promote the goal of maintaining farmer ownership and active agricultural use of conserved farmland, and keeping conserved farmland at agricultural values.” Today, 434 Vermont farms are protected by an option to purchase at agricultural value.

Since 2003, Vermont has only had to fully exercise the option once on the 118 farms protected with the option to purchase at agricultural value that have changed hands.³⁴ In all other cases, either the proposed purchaser has met the requirements to be exempt under the option to purchase at agricultural value, has been issued a waiver (used to facilitate sales to farmers who are good candidates but may not strictly meet program guidelines), or the sellers have chosen to rework the sale. One difference from the Massachusetts program is that farmer-to-farmer sales, as well as sales to close family, do not trigger the easement holder’s option to review the sale in Vermont.

The adoption of working farm easements through Vermont’s farmland conservation policy has improved farmland affordability for Vermont farmers and is an attractive draw for farmers from other states who are seeking an affordable path to farm ownership.



RECOMMENDATIONS

New York agriculture is a diverse and powerful economic engine fueled by our valuable agricultural lands and the farmers who steward them. New York farmers produce food, fiber, fuel, and a huge variety of value-added products, as well as many opportunities for agricultural tourism. New York agriculture not only contributes to the state's economy, but also improves quality of life in rural communities and creates career paths for those interested in farming or other related fields. Yet all of this depends upon a land base that is presently at risk.

It is time for New York to follow the lead of its neighboring states and promote working farm easements as both the priority and the standard for farmland protection. Working farm easements are an insurance policy for public dollars marked for the purpose of protecting New York's agricultural economy and the land base associated with it. By embracing this proven approach, New York can respond to a growing demand for farmer ownership and affordability provisions in certain parts of the state, while helping other regions get ahead of the curve in securing farmland for farmers before land prices become inflated.

To fully secure the significant public investment that has been made in New York's farmland and invest in the future of the state's farm economy, WE URGE THE STATE TO:

- **Prioritize the voluntary use of working farm easements through the Farmland Protection Implementation Grant Program.**
- **Fund and promote the voluntary addition of farmer ownership and affordability provisions to existing easements previously funded by the Farmland Protection Implementation Grant Program.**
- **Facilitate sharing of information and best practices among land trusts to support the use of working farm easements.**

Farmers, landowners, conservation organizations, and other stakeholders in New York have clearly demonstrated a demand for working farm easements.³⁵ The State should acknowledge this ongoing, locally-led farmland protection work by fully embracing this proven policy tool. By doing so, New York will protect its valuable agricultural land, prime soils, and community assets for the people who steward them.



GLOSSARY

Farmer Ownership and Affordability Provisions Voluntary language included in, or added as an addendum to, an agricultural conservation easement that is designed to ensure that protected farmland is affordable to qualified farmers and remains in farmer ownership. Preemptive purchase rights are an example of this type of provision.

Agricultural Use Value The as-restricted fair market value of a property based on its productive commercial agricultural use value rather than its “highest and best” potential use value for residential or other non-agricultural purposes.

Agricultural Conservation Easement Conservation easements are voluntary, legal agreements between a landowner and a public agency or qualified conservation organization, such as a land trust, that permanently limit uses of the land in order to protect its conservation values. An agricultural conservation easement is a voluntary deed restriction designed to keep productive land available for farming.³⁶ Landowners can either sell or donate the rights associated with a conservation easement in exchange for monetary compensation or tax breaks.

Preemptive Purchase Right Voluntary language included in, or added to, an agricultural conservation easement that is designed to ensure that protected land remains affordable to, and owned by, farmers. Preemptive purchase rights recognize the agricultural use value of protected land, establish criteria for qualified farmer buyers, and establish the preferential right of the easements holder or its assignee to purchase protected farmland at its agricultural use value in the event that the landowner intends to sell to a non-farming buyer.

Qualified Farmer A person who meets the qualifications required to purchase land protected by a farmer ownership and affordability provision. Qualified farmer definitions are generally determined by the easement holder, and typically include requirements for farming income and experience that indicate serious intention and capability.

Working Farm Easement An agricultural conservation easement that includes a farmer ownership and affordability provision.



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