Updates & Innovations in Whole Farm Protection Tools

MLTC Conference, March 25, 2023

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Agenda

- Why "whole farm" protection?
- Housing & OPAVs on APR land
 - What is an OPAV? Lessons Learned @ MDAR
 - Dwellings on APR land & Lessons Learned @ MDAR
- Private APRs: Innovations in Housing & Affordability Projects
 - What is a Private APR?
 - Case Studies
- Relevant Updates & Advances
- Q&A







"Whole Farm" Protection Tools

Conservation strategies that address the affordability and accessibility of farmland, housing, and infrastructure for farmers—now and in perpetuity. Includes the whole property, not just the agricultural fields.

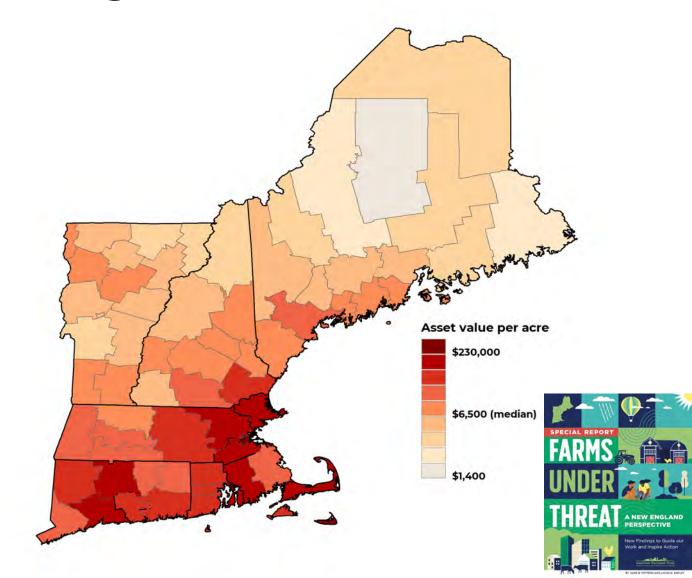
Some examples we'll touch on today:

- Option to Purchase at Agricultural Value (OPAV)
- Private Agricultural Preservation Restriction (Private APR)
- Affirmative Agriculture Covenants
- 99-year ground lease
- House occupancy requirement



Prohibitively expensive farmland for farmers, especially for new and young farmers

At \$15,200 per acre, MA has the 2nd highest farm real estate values in the country (NASS, 2022).



Rising housing costs is a major barrier for farmers and farm workers

MA has the 3rd highest home values in the nation.

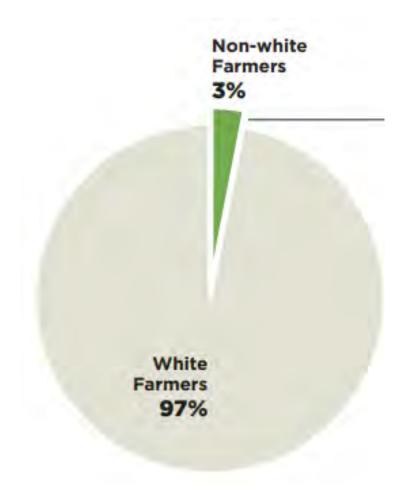


"Massachusetts's median sales price as of Sept 2022 was \$568,800. If we look back at Sept 2019's median price of \$421,000, we can see the increase in median price has gone up 35.1% in three years, which is an 11.7% annual growth rate.

The rate of price increases for the last three years is a little over twice the normal historical price growth rate nationally."

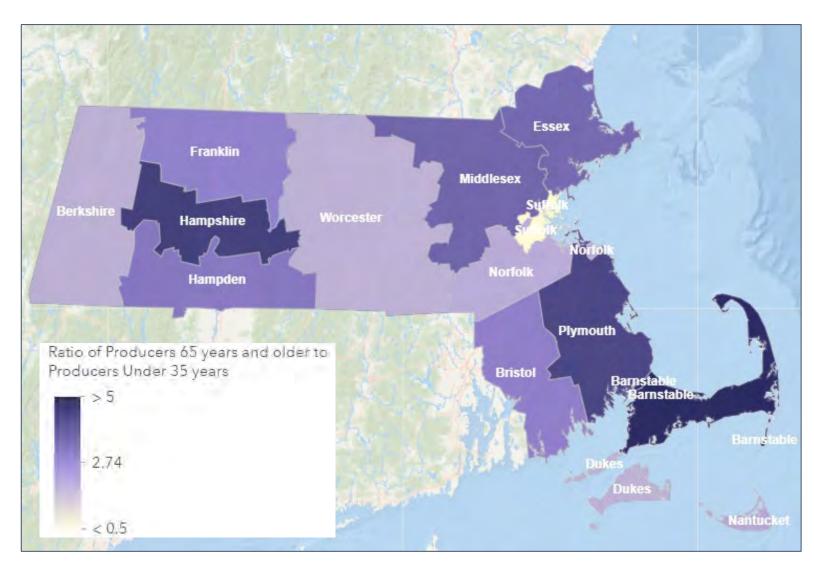
Housing Market & Prices Massachusetts 2023 - Home Value Estimator (realadvisor.com)

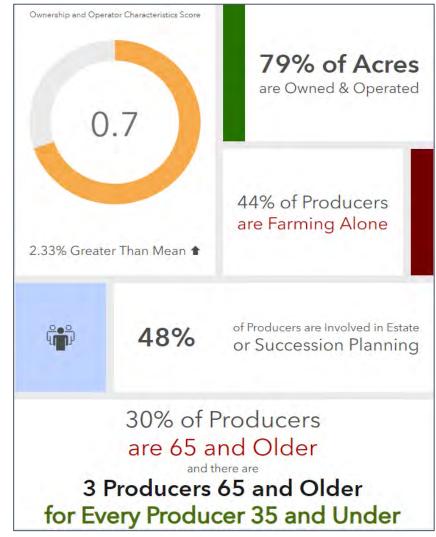
2017 Ag Census trends for non-white farmers in New England



- Most are new and beginning.
- Most don't own their land.
- Most have fairly small operations.

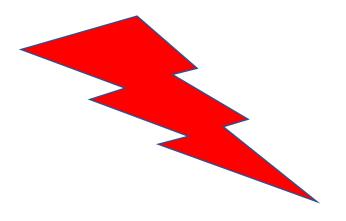
An Aging Farmer Population





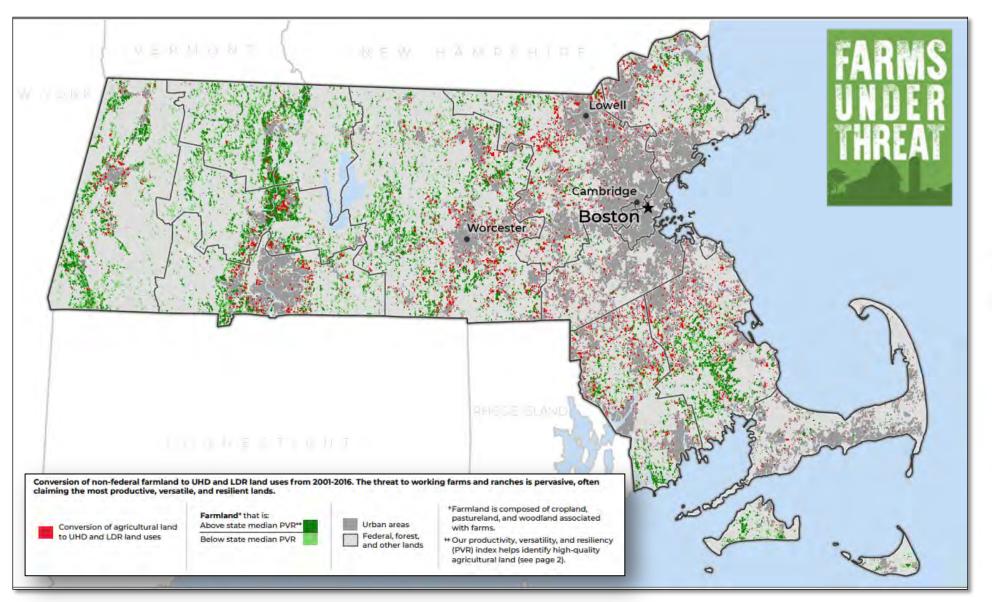
The Transition Gap

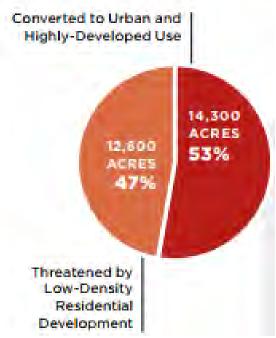
A rapidly aging farmer population (many without succession plans), combined with rising land values and a next generation struggling to gain affordable access to farmland, housing, and infrastructure.

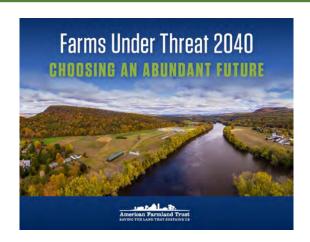


Losing Farmland

Massachusetts converted over 27,000 acres to urban and low-density residential development between 2001-2016







Percent of agricultural land

% of Agricultural Land Projected to be Converted by 2040

Percentage of Agricultural Land Projected to be Converted by 2040

	Business as Usual	Runaway Sprawl	Better Built Cities
New Jersey	16.0	20.1	10.0
Connecticut	15.8	20.9	10.3
Massachusetts	14.8	17.9	10.0
Rhode Island	14.5	17.6	9.8
Delaware	12.5	16.6	8.1
North Carolina	11.6	16.2	6.4
New Hampshire	8.3	10.0	5.2
Tennessee	8.2	11.5	4.6
Maryland	7.8	10.8	4.3
South Carolina	7.5	10.1	4.4
Florida	7.4	9.1	4.9
Virginia	7.3	10.2	4.0
Contiguous U.S.	2.0	2.6	1.1

2040 Future Scenarios Massachusetts Farms Under Threat 2040: Choosing an Abundant Future mapped three scenarios of development between 2016 and 2040. If recent trends continue, 73,800 acres of Massachusetts's farmland will be paved over, fragmented, or converted to uses that jeopardize agriculture. That's 15%. Bay Staters can slash conversion, save farmland, and safeguard the future of agriculture and the environment by choosing compact development PROJECTED AGRICULTURAL LAND CONVERSION 2016-204 Projected agricultural land conversion from 2016-2040 in the Business as Usual scenario. Projected Conversion and Flooding (2040) Land Cover (2016) Urban and highly developed (UHD) and low-density residential (LDR) Farmland* Federal (no grazing) Forestland Other lands Coastal flooding *Farmland is composed of cropland, pastureland, and woodland associated with farms. On recent trends, from 2016 to 2040: Bay Staters will pave over, That's the equivalent of Hardest-hit counties: fragment, or compromise losina Worcester 1,200 farms, 73,800 acres ▶ Plymouth of farmland. **▶** Bristol \$91 million in farm output, and 60% of the 4,900 jobs conversion will occur on Massachusetts's best land.1 based on county averages.2 American Farmland Trust

- If recent trends continue, MA will lose
 73,800* acres of farmland by 2040
- 60% will occur on the state's best ag land
- Equivalent of 1,200 farms, \$91 million in farm output, and 4,900 jobs
- Hardest hit counties will be Worcester, Plymouth, Bristol

^{*}the equivalent of nearly all the farmland that MDAR has protected in the last 43 years.



agriculture and in the hands of working farmers.

Whole farm protection tools can help to overcome barriers of entry into agriculture for all farmers.

These tools can help address farmland loss, land and housing affordability, farm viability, equity, and land access & succession issues.

Housing & OPAVs on APR land

- 1. OPAVs
 - OPAV 101
 - Lessons Learned
- 2. Dwellings
 - On APRs
 - Lessons Learned







\$991,996 3 3,505
Redfin Estimate Beds Baths Sq Ft



Track sales











Option to Purchase at Agricultural Value Basics

Used by APR and some land trusts. Allowed in ACEP-ALE projects.

Essentially an enhanced Right of First Refusal that limits resale price.

Good tool to promote transfer of protected ag land to farmers and ranchers or non-profits that lease land to farmers and ranchers.

By itself, not always effective in making land affordable for undercapitalized producers.







Option to Purchase at Agricultural Value Basic Mechanics

Conveyance

- OPAVs typically part of a restriction acquisition; usually included in restriction deed (not separate conveyance)
- Though acquisition/adding of OPAV post restriction is possible

Valuation

- APR considers as part of restriction appraisal
- Other entities may use a separate appraisal







Option to Purchase at Agricultural Value Basic Mechanics, cont.

Triggering the OPAV

- Sale or transfer of property
- Exemption Examples *Included in APR
 - o Family members *
 - o Qualified farmers
 - o Co-owners*
 - o Short-term farm leases
 - o By devise (Will)*
 - o Nominal transfer/gift*







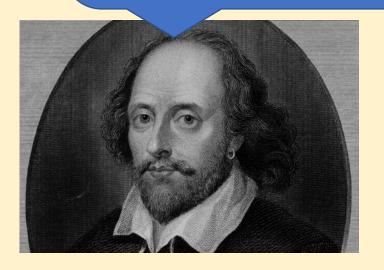


Option to Purchase at Agricultural Value Basic Mechanics, cont.

Using the OPAV

- Automatic waivers (Included in APR)
 - o Must be a Farmer
 - o Must have a Viable business plan
 - o No major violations of APR land
 - o Purchase price at Agricultural Value
- Discretionary waivers (Included in APR)
 - If don't meet automatic waiver requirements

To Exercise or not to Exercisethat is the question!









Greenbelt
Essex County's Land Trust

Option to Purchase at Agricultural Value Basic Mechanics, cont.

Exercising the OPAV

- APR=Does not meet exemption or waiver criteria
- Generally a decision required within x timeframe
 - APRs vary widely from as little as 16 days to 120 days









Lessons Learned at MDAR: OPAV

Pros

- ·Values kept at ag value
- ·May maintain restriction purchase price values
- ·Transfers going to farmers & "beginning farmers"
 - •75% Farmers
 - •25% Beginning Farmers
- ·Resolved stewardship issues
- ·Farm seekers love the OPAV

=OPAV is better than ROFR





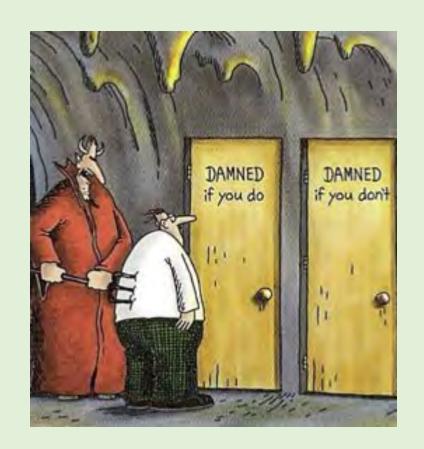




Lessons Learned at MDAR: OPAV

Challenges

- ·Public vs. Private entity
- ·Capacity
- ·Not necessarily affordable even at Ag value
- ·Sellers not happy:
 - •Don't like value limit, time it takes to get waiver
 - •Often don't understand (2nd+ Gen)
 - ·Cost of appraisal
 - ·CPI is not necessarily market value
 - ·What if excluded land included in the deal?
- Displaced leasing tenant farmers
- •Does a long-term lease constitute a transfer?
- •Doesn't always result in transfer to different buyer (APR)



Lessons Learned at MDAR: OPAV

Summary Based on 30 years of OPAVs, 650 APRs, hundreds of transfers

- 1. Effective at keeping land at Ag value
- 2. Ag value does not always = affordable/accessible
- 3. Effective in keeping land in ownership of farmers
 - -Did not have to use the OPAV vast majority of the time (12x) (farmers are the buyer)
 - -When used, resulted in a transfer to a new buyer 33% of the time (4 times)
 - -Only 8x out of hundreds of transfers resulted in land going to a non-farmer or higher than ag value (no bids)
- 4. May be helpful in maintaining restriction purchase prices









Dwellings on APRs

An Evolving History

- 1) 1980-1993 (332 APR's)
 - Can include existing dwelling(s)
 - And/or right to request dwelling(s)
 - No limit on price
- 2) 1994-2002 (266 APR's)
 - Dwellings excluded
 - Right to request Dwelling(s)
 - OPAV limits value
- 3) 2003 Present (353+ APRs)
 - Dwellings excluded
 - No right to request Dwelling(s)
 - Right to request labor housing









Lessons Learned at MDAR: Dwellings

Challenges



Affordability/resale value

- ·Restricted land sales driven by desire for house vs land to farm
- •Without price limitation, after values could be same as before value (estate lots)
- •Even with price limitation, not necessarily affordable even at "Ag value"
- Leased land is important to have too
 Affordable business model









Lessons Learned at MDAR: Dwellings

Challenges

Replacement Cost Pros and Cons

Pros

- -Usually lower than Market Value
- -Lower than Reproduction Cost (per USPAP appraisal definition)

Cons

- -It isn't always less than market value
- -Even replacement cost can be unaffordable to many people











Lessons Learned at MDAR: Dwellings

Challenges

Ever evolving needs and goals

- Public entity vs private
- Original Grantor intent & Restriction terms vs dynamic, evolving needs
- Changeover of operation types and needs
- Perceptions and Desires vs. Need
 - "There aren't any APRs that are not being farmed because there isn't a house on it, but there are APRs not being farmed (for food) because there is one."

Loopholes/unintended uses

- Rentals
- Labor housing as Dwellings









Private APRs: Innovations in Housing & Affordability Projects

What is a "Public" APR?

APR program funds require holder to be MA. Municipality can co-hold.
 (MGL Chapter 20 section 23)

What is a "Private" APR?

- Held by any qualified restriction holder other than Commonwealth
- Funds from any source other than APR program
- Requires approval by Municipality (Mayor, City Manager, City Council, BOS)
- and approval by the Commissioner of Agriculture
- (MGL Chapter 184 Sections 32)







Private APRs: Innovations in Housing & Affordability Projects

Minimum Requirements (*Via current policy)

- "Actively devoted to agricultural or horticultural uses as defined in sections 1-5, inclusive, of chapter 61 A."
- •For farmland properties under five acres in size, at a minimum the following standards must be met:
 - a. the property is predominately in agricultural or horticultural use;
 - b. the soils are predominately Prime or State Important (local?)
 - c. the property abuts other protected farmland
 - d. the property is at least one acre in size







Private APRs: Innovations in Housing & Affordability Projects

Minimum Requirements (*Via current policy)

- Requirement to keep the land available at all times for active agricultural/horticultural use.
- •Legal, accessible, and functional access.
- •The land is adjacent or in the vicinity to other agriculturally viable parcels.
- Public benefit
- Due diligence (title, haz-mat)











Our Farms, Our Future: Greenbelt's Farm Conservation Program

1961-2010	2012-2014	2015-2017	2018-2019	2020
Traditional CRs & fee- owned	Educational Programs for Senior	CRs w/ Farming Requirement	APR w/ OPAV	Ground Lease
farmers Public Education & Outreach Programs		Educational Programs for - Senior farmers - Young Farmers	Educational Programs for - Senior farmers - Young Farmers - Non-farming farmland owners CRs w/ farming requirement	Educational Programs for - Senior farmers - Young Farmers - Non-farming farmland owners CRs w/ farming requirement Public Education & Outreach Programs Traditional CRs & fee-
	Traditional CRs & fee-owned	Public Education & Outreach Programs		
		Traditional CRs & fee- owned	Public Education & Outreach Programs Traditional CRs & feeowned	





Private APR

- Approved and signed by Commissioner of MDAR, not Secretary of EEA
- Allows greater focus on farming (purposes, reserved rights)
- Can address habitat conservation
- Can include farmer residence (unlike MDAR APR)
- No template: Land Trust can use / adapt / combine EEA CR, MDAR APR, other Ag CE models
- Municipal Co-holders: same as EEA CR







Land Trusts are uniquely positioned to help keep farmland affordable for farmers.

1st privately-held
APR in MA with an OPAV

Sale of Land: \$703,500 Sale of APR: \$403,500 Enabled purchase of restricted farmland for \$300,000.

Funds
Private Fundraising
Private Sale

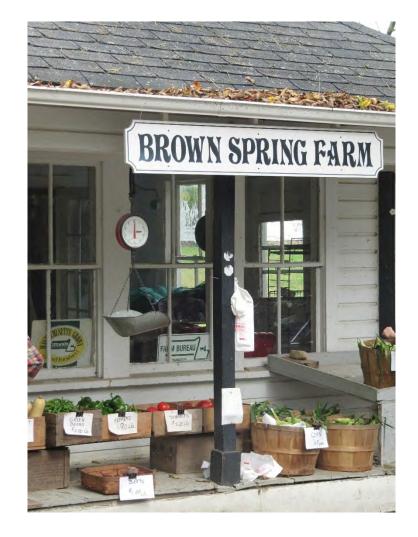






What is unique?

- Co-hold APR with Town
- OPAV runs only to Greenbelt
- APR and OPAV include the house





Building Envelope

- Can't be subdivided
- Rehab or replacement substantially similar to existing 19thc. farmhouse.
- Height and footprint restrictions





How this OPAV works

- Family and Qualified Farmer Exemptions
- Price for land, greater of:
 - full FMV as ag land
 - Appraised FMV in original appraisal adjusted for inflation plus any in ground improvements
- Price for improvements, lesser of:
 - Replacement cost (less depreciation)
 - FMV as used for Agriculture
- Price for house, lesser of:
 - Replacement cost (less depreciation)
 - FMV of structure based on comps of homes bought or leased for agriculture-related uses (i.e. farmer housing).









Ground Lease

- Land Trust owns land
- Land Trust enters into
 99-year lease with farmer for land
- Farmer owns
 everything on top of the
 soil: farm & residential
 improvements, farm
 business, crops.







Ground Lease

- Land Trust owns land
- Land Trust enters into 99year lease with farmer for land
- Farmer owns everything on top of the soil: farm & residential improvements, farm business, crops.
- Farmer owns everything on top of the soil = EQUITY = Long-term farm viability







Ground Lease

- Land Trust owns land
- Land Trust enters into 99-year lease with farmer for land
- Farmer owns everything on top of the soil: farm & residential improvements, farm business, crops.
- Farmer owns everything on top of the soil = EQUITY = Long-term farm viability
- The most powerful tool for making farmland affordable and keeping it affordable into the future.



Green Meadows Farm Ground Lease

With guidance from:

- Equity Trust
- Greenbelt Committees
 - Farmer Advisory Committee
 - Green Meadows Farm Advisory Committee





Green Meadows Farm Ground Lease

- \$4M purchase
- 12-month Committee Process
- Developed and Issued RFP
- Reviewed and Selected Farmers in two-Phase process
- Signed 99-year lease in January 2021.





Iron Ox

Green Meadows Farm Ground Lease

- Organic (seeking cert.)
 veggie CSA/ farmstand/
 wholesale
- Strong sustainability component
- Rotational/ regenerative grazing on fallow fields



Our Farms, Our Future: Greenbelt's Farm Conservation Program

2015-2016	2017	2018	2019	2020	2021	2022+
Staff Training and Networking	Staff Training and Networking	Staff Training and Networking	Bought a Farm	Farm Focus for Newsletter	New 5-year Strategic Plan with Farmland prominent	Evolution
	Staff and Board Field Trip to Northampton Community Farm and Many Hands Farm	3-Year Strategic Plan - "Pilot" a Community Farm	pale 21	LAND TRUST LIFE	Signed 99-Year Ground Lease	
	ivially fiances failif	Awarded NRCS RCP Grant		FARMS	Start filming documentary on Iron Ox Farm	
		New Leadership that did not have a farming background		Greenbark.		

Success and momentum



Internal – Hard Work Making sure Stewardship Staff learning curve not staff were on board and equal to Board learning comfortable. curve Extended committee Staff frustration with pace process (1 year) around and difficulty of some farmer selection for 99 conversations. year lease **Three Strategic Plans** Farm viability vs. and two Presidents. Other Goals mission creep argument)

Case Study: Clark Farm

Carlisle, Massachusetts



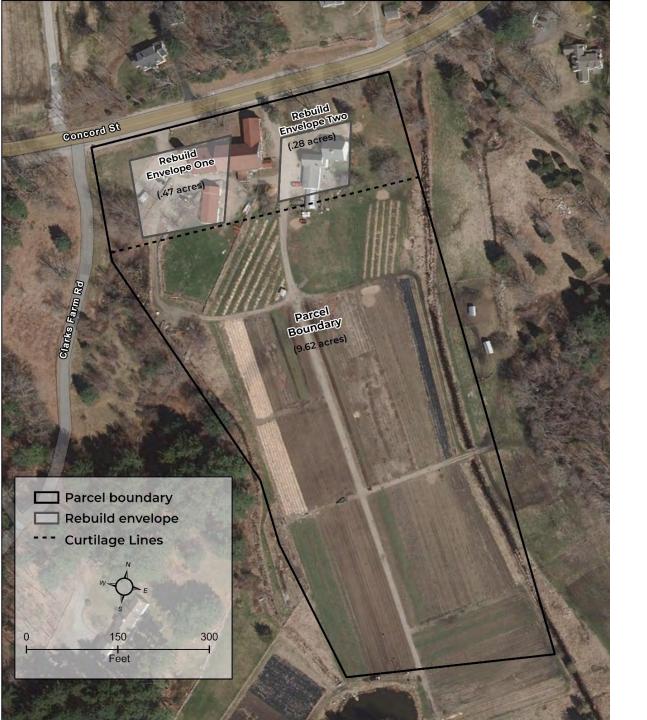


Clark Farm Background

Carlisle, Massachusetts

- 25 miles west of Boston
- Development pressure
- Affluent, average home value = \$1.2M
- Few remaining farms but community appreciation for local food and land conservation.
- Landowners: Longtime supporters of land protection, food policy and land access/affordability issues
- Farm manager: Operates dayto-day. Lives on site with family. Goal of transition to ownership.





Land & Buildings

- 10 acres: Organic fruits and vegetables (CSA). Lambs, goats, pigs. Educational opportunities.
- 2 barns, 1 house
- In ag production since the 1700s.
- They farm other contiguous land (~10 acres).

Underlying CR

- Prior owner protected property with donated CR in 2003 with local land trust (Carlisle Conservation Foundation)
- Permanently protects the natural, scenic and open condition of the property, "which include open fields, agricultural lands and ecologically significant areas."
- Limits residential development to 2 single-family residences, and did not prevent subdivision.

Project Goals

Landowner's primary goals:

- Enhance the protection of the property for agricultural use (without amending the original 2003 CR) beyond the CR's restrictions; and extinguish the 2nd residential building right.
- 2. Keep the farm, house, and barn affordable and accessible to future generations of farmers forever.
- 3. Ensure active commercial agricultural use on the premises and occupancy of the house by working farmers.

Tools:

Overlay Private APR with OPAV that addresses both conservation and affordability goals, and includes an affirmative ag covenant.

The Overlaying Private APR

- Recorded in November 2021, held by American Farmland Trust.
- Utilizes standard APR language modified in collaboration with the landowners, AFT, and MDAR.
- Supports and enhances the purposes of the existing CR:
- In addition:
 - Removes remaining residential development right.
 - Adds:
 - Affirmative Agriculture Covenant linked with
 - Option to Purchase at Agricultural Value (OPAV)

Affirmative Covenant

(Affirmative Duty to Use the Premises for Agricultural Use)

- Requires that the landowners keep the **farm in continuous** agricultural use.
- If property is out of farming for more than 2 consecutive years, grantee may take "necessary and appropriate" actions to remedy.
- After 3 years, and with proper notice, grantee may exercise the OPAV and purchase for a price pre-set under the terms of the Private APR.



Option to Purchase at Agricultural Value

(Option to Purchase at Commercial Agricultural Value)

Triggered by:

- 1) Failure to farm continuously (Affirmative Covenant)
- 2) Offers to purchase the property or leases greater than 3 years

Exceptions for transfers to:

- family members;
- the <u>current farmer</u> (if they have managed the farm for at least the 5 preceding years);
- Qualified Farmers (sale or lease);
- or to **non-profits** who support agriculture

Option to Purchase at Agricultural Value

(Option to Purchase at <u>Commercial</u> Agricultural Value)

Purchase Price: Established by <u>mutual agreement</u>; *if no agreement*, it will be based on the ag. value **preset in the Private APR at \$300,000** (adjusted for inflation) & the appraised value of any agricultural improvements.



Other Cool Stuff

- House Occupancy
 Requirement: Occupant of the house must be the farmer (or former farmer) and their family and;
- Qualified Farmer: Must be principally engaged in agriculture—at least half of their annual gross income from the business of farming on the Premises and on farmlands within 10 miles of the Premises (if any are utilized).



Sound Ag Practices are Enforced:

 If sound ag practices are not being practiced, Grantee can require the Grantor to undertake certain practices to preserve the agricultural integrity of the premises (i.e., grazing, mowing, tilling).

Project Impacts

Before:

- Clark Farm purchased by landowners for \$1.4M in 2010
- 2020 tax assessment = \$1.2M

After Private APR with OPAV & Affirmative Ag Covenant:

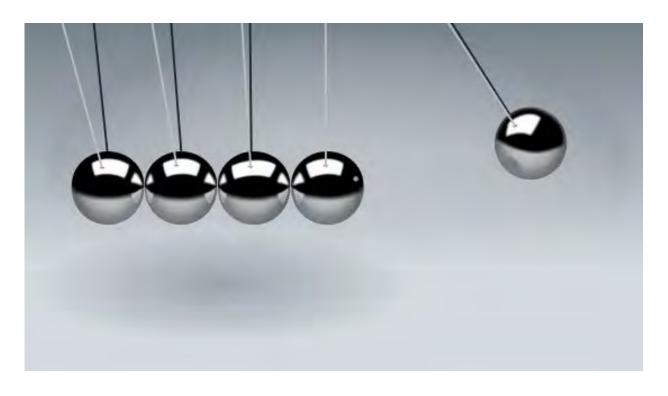
- Private APR closes in November 2021
- Appraisal in May 2022 valued the property at \$300,000 (price established by APR)
 - →No added value from agricultural improvements yet.
- Annual property taxes reduced from \$20,000 per year to \$4,750 due to the Private APR restrictions

The project successfully:

- Removed the non-ag value from the farm.
- Creates long-term affordability of a whole farm (land, house, barns), despite the presence of an expensive house.
- Prevents subdivision of buildings from the farm (and removed the preexisting residential building right).
- Keeps the whole farm in active, commercial agriculture for farmers.

Broader Impacts

AFT has since used a similar model in the first-ever OPAV projects in both Minnesota and Wisconsin!





(Short) Q&A







Farmland of Local Importance (FLI) Initiative

- **FLI:** A list of Soil Survey map units that have evidence of suitability for crop production within a locality but are <u>not</u> classed as "important farmland soils" (prime farmland, unique farmland, farmland of statewide importance) in the Soil Survey.
- When acknowledged, these soils can be considered for USDA Natural Resources Conservation Service, Agricultural Land Easement funding eligibility.
- ALE funding requirement at least 50% important farmland soils.

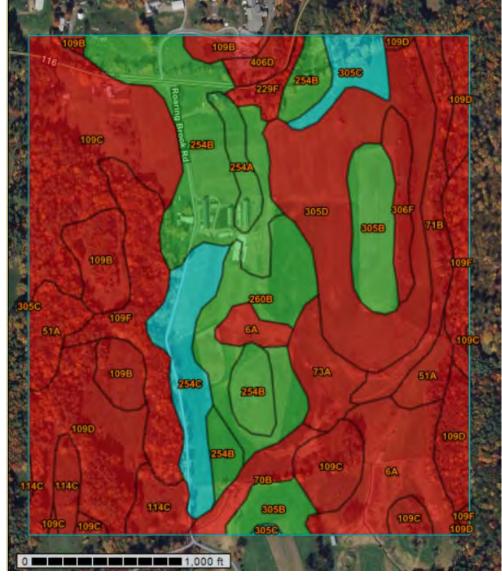
GOAL: to increase greater farmland protection potential in MA!







Blue:



Green: "prime farmland" soil map units

"farmland of statewide importance" map units

"not prime farmland"

?? – farmland of local importance -??

FLI Recognition Process

- Compile evidence of suitability for crop production (NRCS/AFT)
 - aerial imagery
 - land use on soil types
 - local knowledge
- Consideration of conservation policies (wetland conservation compliance provisions of the Food Security Act, highly erodible land considerations)
- Verified by NRCS soil science staff or designee with qualifiers as applicable.
- Officially Designated the list of soils is signed
 - Signatories: local official and NRCS State Conservationist
 - Recorded in the NRCS Field Office Technical Guide

Farmland of Local Importance for Town of Conway, Massachusetts

In the Town of Conway, Massachusetts, there is concern for certain additional farmlands for the production of food, feed, fiber, forage, and oilseed crops, not identified as prime farmland, unique farmland, or farmland of statewide importance. In accordance with the Code of Federal Regulations title 7 part 657, lands in the Town of Conway represented by the following soil survey map units as qualified are identified by the local agency concerned and approved by the signatories as farmland of local importance.

Farmland of local importance qualifying conditions take into consideration the highly erodible land and wetland compliance provisions of the Food Security Act of 1985 and associated USDA program eligibility however, farmland of local importance designations do not guarantee compliance with the Act.

Inventories of important farmland soil survey map units do not constitute a designation of any land area to a specific land use.

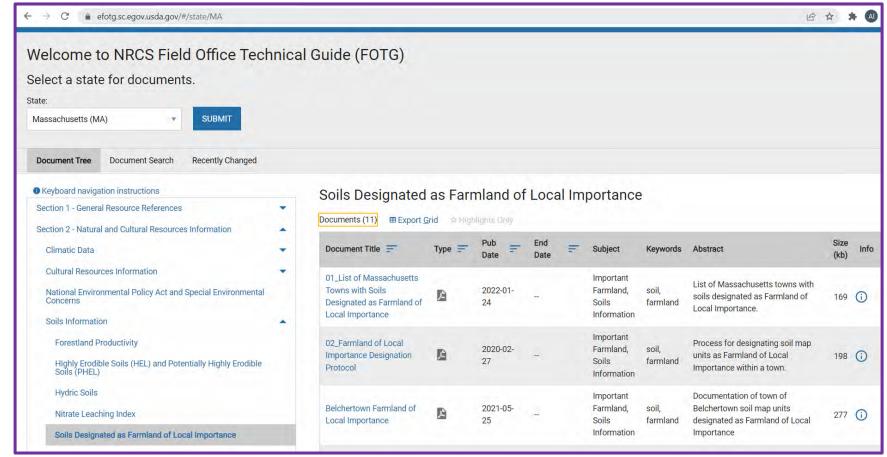
Map Unit Symbol	Map Unit Name	Qualifier
6A	Scarboro mucky sandy loam, 0 to 2 percent slopes	Where historically drained, or growing season saturation in years of normal precipitation does not preclude crop production viability.
30A	Raynham silt loam, 0 to 3 percent slopes	Where historically drained, or growing season saturation in years of normal precipitation does not preclude crop production viability.
31A	Walpole sandy loam, 0 to 3 percent slopes	Where historically drained, or growing season saturation in years of normal precipitation does not preclude crop production viability.
51A	Swansea muck, 0 to 1 percent slopes	Where historically drained, or growing season saturation in years of normal precipitation does not preclude crop production viability.
70B	Ridgebury fine sandy loam, 3 to 8 percent slopes	Where historically drained, or growing season saturation in years of normal precipitation does not preclude crop production viability.
71B	Ridgebury fine sandy loam, 3 to 8 percent slopes, extremely stony	Where historically drained, or growing season saturation in years of normal precipitation and the distribution of surface stones and boulders do not preclude crop production viability.
73A	Whitman fine sandy loam, 0 to 3 percent slopes, extremely stony	Where historically drained, or growing season saturation in years of normal precipitation and

³ "Historically" is defined as prior to December 23, 1985, in accordance with the wetland conservation provisions of the Food Security Act of 1985.

² Crop production is the process of managing land to grow and harvest food, feed, fiber, forage, and/or oilseed crops including fertilizing, pest control, irrigation, cultivating, and preparation for planting as applicable to the crop, and harvesting to maintain viable yields without causing excessive erosion. In addition to row crops, crop production includes hay and other feed crops, perennial fruit and nut crops, and improved pasture. Improved pasture is defined as grazing lands that are not in crop rotation and are planted primarily to introduced domesticated native forage species that receive periodic renovation and/or cultural treatments such as tillage, fertilization, mowing, and weed control.

Official Designation

- Document signed by NRCS State Conservationist and Local Official
- Housed in NRCS Field Office Technical Guide, Section II



~45 towns have adopted FLI in MA so far

FOTG - https://efotg.sc.egov.usda.gov/#/state/MA/documents/section=2&folder=62902

We need your local connections to help get each town to adopt this designation!

Please reach out if you would like our help getting FLI adopted in your town/service region!

Al Averill, Certified Professional Soil Scientist

albert.averill@usda.gov

413-253-4356

Jamie Pottern

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(413) 240-4621

FACTSHEET:

https://farmlandinfo.org/publications/designating-farmland-of-local-importance-in-massachusetts/





MDAR—Policy & Program updates

- Eligibility for APR
 - No soil requirement (that is ALE)
 - Soils ranked strongly
 - Local soil types now included in ranking
 - 50% match requirement if not ALE (policy not law)
- APR applications accepted on rolling basis & ranked quarterly
- Land Trust reimbursement with on public and private APRs
- MA Farmland Action Plan
 - Prioritization of farmland
- APR listening sessions April & May







RESOURCES





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Q&A Discussion





