



## Small Parcel Agriculture

### Policies for the changing face of Massachusetts agriculture

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Since the 1940s farmland in Massachusetts has been steadily converted to other uses, with much of it permanently lost to commercial and residential development. This has resulted in a patchwork of noncontiguous farmland and former farmland parcels that are less than five acres in size. At the same time, farming in Massachusetts has changed dramatically, underscoring a significant shift in the nature of farming in the Commonwealth, sources of our local food, and in our food system overall.

In the 1960's, when farmland conservation planning began to gain traction, most farmers owned the land they worked and farmed large parcels.<sup>1</sup> Between 1964 and 2017 the number of farms in the Commonwealth that were less than 10 acres grew by 57%<sup>2</sup> and the number of farmers who rent farmland grew from 7.1% to 25%.<sup>3</sup>

New and aspiring farmers often begin their operations by renting small parcels of land due to land costs and limited availability. In addition, because of increased yields due to advances in plant genetics, soil health, and growing techniques, and access to direct-to-consumer markets that generate more sustainable prices, some farmers are able to farm small parcels of two acres or even smaller, while generating income and supporting lifestyles they find sustainable. Coupled with the competition for land, this has led to a 147% increase in the number of new and beginning farmers farming fewer than 10 acres since 1982,<sup>4</sup> while new and beginning farmers farming between 10 and 49 acres grew by only 18%.<sup>5</sup>

As a result of these forces Massachusetts now has significantly more food production on parcels smaller than five acres than when agricultural land protection laws, regulations and policies were put in place, and our farmland protection system no longer supports farming as intended, or as necessary to benefit the environment, sustain the breadth and resilience of our local food system, confront the impact of climate change, and to support equity and social justice.

In fact our current system intensifies the loss of land in agriculture, particularly in suburban and peri-urban areas of the state, and has led to land access being cited as the primary barrier for new and beginning farmers, who make up 28% of all farmers in the Commonwealth,<sup>6</sup> as well as for established

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<sup>1</sup> 1964 USDA Census of Agriculture: 8,019 farms, average size 112.5 acres, 1,508 farms under 10 acres.

<sup>2</sup> 1964 USDA Census of Agriculture: 7,241 farms, average size 68 acres, 2,375 farms under 10 acres.

<sup>3</sup> 1964 USDA Census of Agriculture: 7.1% of farmers and 3% of all farmland.

<sup>4</sup> The 1982 USDA Census of Agriculture shows 385 new and beginning farmers farming under 10 acres. In 2017, 951 new and beginning farmers farmed 10 acres or under.

<sup>5</sup> 2017 USDA Census of Agriculture: 623 farming between 10 and 49 acres in 1982, and 737 in 2017.

<sup>6</sup> 2017 USDA Census of Agriculture: 17% of all farmland in Massachusetts was rented, 25% of farmers rented at least some portion of the land they work, and 743 farmers exclusively rent land of which 641, or 86.2%, farm from 1 to 9.9 acres.

farmers growing their businesses. Sales of farmland for non-farming purposes are often due to death or retirement without a succession plan.<sup>7</sup> As the age of farmers in Massachusetts increases, this trend places more stress on farmland protection and on access to it for new and beginning farmers, as well as on the affordability of all farmland. These factors have critical implications for the future of farming on land in the Agricultural Preservation Restriction (APR) program, as new and beginning farmers consistently state they cannot afford to buy or rent land enrolled in APR because those parcels are too large for their purposes.

In addition, though the patchwork of parcels of farmland and former farmland that are less than five acres in size occurs throughout the state, farming smaller parcels frequently takes place in communities of color, low income areas, and urban areas. As a result, policies that exclude smaller parcels from benefits afforded larger parcels of farmland are inherently inequitable and communities and individuals that do not have access to large parcels, typically provided through inheritance and generational wealth, remain systemically disadvantaged.

#### **Renting is not always the answer to high land prices**

Renting land, particularly for new and beginning farmers, while often necessary under current policies and regulations, creates long term barriers to success and sustainability. Lack of infrastructure on rented land is one of the key challenges noted by farmers renting land. When coupled with lease terms that do not support infrastructure investment by farmers, business growth and wealth generation becomes essentially impossible. Additionally, farm real estate is the principal source of collateral for farm loans for growth or to meet short term operating expenses.<sup>8</sup> As a result, renting land further disadvantages new and beginning farmers.

As the Commonwealth looks to greater food system resiliency and economic growth, increasing our food production capacity will require reversing the trend of farmland loss and bringing more land, much of it former farmland, into production. This will require restructuring our farmland classification and protection policies, specifically by lowering the five-acre minimums for supportive programs and policies, while ensuring that total municipal tax revenues do not decrease. While a number of bills have been filed in recent legislative sessions that would address this issue, the acreage cap placed on agricultural land valuation in Article 99 of the state constitution necessitates a constitutional amendment to address this issue properly.

The 2015 *Massachusetts Local Food Action Plan*, along with the *Perspectives on Resilience and Recovery* report published by the Collaborative in 2020, note the need for further innovation, additional farm support resources, creating statewide farmland policy, and zoning changes to fully address farmland access and protection issues. Each of these efforts should include consideration of the need for supports for farming on parcels of land that are under five acres in size.

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<sup>7</sup> Raup, 2003 “Disaggregating Farmland Markets”; Government Policy and Farmland Markets: The Maintenance of Farmer Wealth. Moss & Schmitz, Ames Iowa, Iowa State Press

<sup>8</sup> Nickerson, Morehart, Kueth, Beckman, Ifft, and Williams USDA RES 2012

## Relevant farmland protection programs and laws

**Article XCIX** (99) of the Massachusetts Constitution grants authority to the legislature to value land according to its agricultural or horticultural use. This allows the state to set the value of such land lower than that of developed or developable land, reducing the tax burden for the owner. Eligible parcels must be five acres or more, and must have been in agricultural or horticultural use for at least two years.

Massachusetts General Law (MGL) **Chapter 61A** lowers the valuation of enrolled agricultural land for municipal real estate tax purposes, and thus reduces the tax on that land without lowering total tax revenue collected by the municipality. As per Amendment XCIX to the Massachusetts Constitution, enrolled land must be five or more acres in size.

The **Agricultural Preservation Restriction** (APR) program, administered by the Massachusetts Department of Agricultural Resources (MDAR), purchases development rights, creating land that can only be used for agriculture. It relies on Chapter 61A for regulatory guidance and thus requires that parcels be more than five acres in size. Program regulations further hinder the ability to lease parcels of APR land less than five acres while allowing lessees to take advantage of APR program grants and supports. The purchase of the land's development rights must be approved by the state and may be paid for by the state, a municipality, an organization whose purpose is to preserve land, or a collaboration of two or more of these entities. A contract specifies the rights of use and other terms for landowner and those of the holder of the APR. Once enacted, only an act of the legislature can remove land from an APR.

**Section 5 of MGL Chapter 59** sets real estate and property tax exemptions and terms, as provided for in Article IV of the Constitution, and amendments CX (forest, wild, and recreational land) and XLIV (income tax and property tax exemptions).

The **Community Preservation Act** allows communities to create a local Community Preservation Fund for protecting open space and other lands with funds created through the imposition of a surcharge of not more than 3% of the tax levy against real property. Open space includes agricultural land, grasslands, fields, and forest land and no minimum acreage is required. Property valuation and thus taxes are based on the restricted value of the land.

**MGL Chapter 128 Sections 7A-F** requires that the state make suitable vacant public land available for garden, arbor, or farm purposes irrespective of size.

**Transfer of Development Rights** (TDR) is a process in which an owner sells development rights in exchange for permanent conservation easement to an owner of another parcel who receives rights to build at densities higher than allowed under base zoning. TDRs could provide resources to protect land for agricultural purposes in conjunction with or outside of the APR program. If outside of the APR program acreage minimums would not apply.

## **Legislation under consideration, 2021-22 (192nd General Court)**

A number of bills have been filed in the 192<sup>nd</sup> General Court that would address or impact how small parcel agriculture is treated for taxation purposes. This list summarizes some of those bills.

### H91: An Act amending article 99 of the Massachusetts constitution

This bill would change the state constitution. It would value agricultural and horticultural land according to its agricultural or horticultural use for farmland that is two acres or larger in cities and towns where the population is under 50,000 and 1/4 acre or larger in cities and towns with populations greater than 50,000, provided the parcel has been actively devoted to agricultural or horticultural uses for two years. This bill addresses many of the issues raised with farmland valuation and the constitutional requirement that all land be assessed and taxed under equal terms. Because it alters the valuation rather than directly change the tax rates this bill would not reduce total real estate tax collections for any municipality. The process to change the state constitution requires a 2/3 vote of the legislature in each of two successive sessions, and then a vote by the voters in the Commonwealth, so passage would be at least a five year process.

### HD622: An Act relative to expanding agricultural land

Would Amend Chapter 61A, Sections 4 and 5, to provide that non-contiguous land of less than five acres may be valued at agricultural or horticultural values if under the same ownership and farm operations and the total of all land is at least five acres. The parcels also must be within the same municipality, or within 10 miles of each other. This legislation would begin to address the issue of parcel size within the current limits of the state constitution. Equitable access concerns are likely to need additional creative ownership or lease terms, but this proposal would be an important step in supporting current and new agricultural businesses in the Commonwealth.

### HD2028: An act relative to non-contiguous farm land

Would amend Chapter 61A, Section 4, to allow an owner of two or more non-contiguous areas of land equaling at least five acres, to apply for the provisions of Chapter 61A if the acreage otherwise meets all other Chapter 61A requirements for inclusion. This addresses the same concerns as HD662, without the limitations regarding distance between parcels. Given that road and other transportation systems make travel from farm site to farm site relatively easy, and the fact that farmer housing may not be affordable within 10 miles of any farm parcel, this bill would provide more support for current and future farmers.

### SD1852/HD2944: An Act supporting the commonwealth's farmers

One section of this omnibus bill would modify Chapter 61A to include non-contiguous parcels under the same ownership that are actively being farmed under the same farm, total more than five acres, and are within the confines of the same municipality or no more than 10 miles from each other. Like HD622, this legislation begins to address the issue of parcel size within the current limits of the state constitution. Equitable access concerns are likely to need additional creative ownership or lease terms, but this proposal would be an important step in supporting current and new agricultural businesses in the Commonwealth.

### SD598/HD3842: An Act to promote urban agriculture and horticulture

Would amend Chapter 59 Section 5 to add a property tax exemption of up to 100% of the assessed value of real estate in agricultural and/or horticultural use, so long as the real estate (or portion thereof) used for agricultural and/or horticultural is less than two acres in area. The bill further provides that any portion of land not used for agricultural and/or horticultural purposes may not be claimed under this

exemption; limits eligibility to taxpayers living in a municipality with a population of 50,000 or more or which meets the definition of a gateway municipality; and provides that municipalities that accept this provision may thereafter modify the percentage of the assessed value exempt from taxation. This bill applies to 36 of 351 municipalities in the state and would require municipalities to opt-in to participate. It would begin to address issues within the context of the state constitution and may be an important step to address farmland access and preservation, though would lower total tax revenues if other steps are not taken at the municipal level.

HD3972: An Act relative to the classification and taxation of urban public access land

Would add a new chapter to Chapter 61 (61C) to the General Laws and provide that parcels in cities that are at least 5,000 square feet in area and are in a substantially natural, wild, or open condition, and are open to public access or used in urban agriculture, or devoted primarily to recreational use, be valued only on their use. For urban agriculture, this would mean valued at agricultural value. This bill begins to address issues of farmland access and equity, but may not be allowed under the current state constitution.

HD2977: An Act protecting the natural resources of the Commonwealth

Would establish the Public Lands Preservation Act under a new law (Section 131B) that would require any governmental owner seeking a change in use for lands suitable for farming that it has acquired, or has liens, rights, or other encumbrances or interest on, including APR and conservation restrictions, to mitigate the loss by paying for or providing for replacement land that is suitable for farming. It further specifies that replacement land must not be land under Article 97 at the time; outlines procedures and requirements for converting and replacing all Article 97 land and for issuing waivers; requires the Secretary of Environmental Affairs to approve any proposed replacement land; and would establish relevant rules and regulations to implement the law within one year of passage. Article 97 requires that land acquired by public entities for conservation are not converted to other uses. This bill has the potential to preserve more land for farming and strengthen the implementation of Article 97, and codifies some, but not all, of the intent of Executive Order 193.

HD1610: An Act relative to the property tax classification in cities and towns

Would limit the shift of tax burdens to residential property from commercial and other classes. It would require a study of the impact on businesses and farmland, and recommendations for targeted property tax relief for those sectors. Generally farmland is considered commercial property, regardless of the tax structure set in municipal bylaws. When agricultural land is valued at agricultural rates the taxes that otherwise would be paid does not reduce the total tax levy for the city or town and thus slightly increases the property taxes of all other land. This bill could be counter to efforts to increase farmland protection in general, and on smaller parcels specifically, and may lower total tax levies or incent multiple tax rates in communities that do not have them now. Passing the bill to simply implement the study and publish its recommendations, as outlined in the bill, rather than committing in advance to implement them without understanding their full impact, would be more prudent.