

Farmland Protection in Massachusetts

An Overview

Kathleen Doherty, Farmland Easement Support Specialist
American Farmland Trust
2024



MASSACHUSETTS
LAND TRUST
COALITION





Who is in the room?



Presenters

Kathleen Doherty, American Farmland Trust
Farmland Easement Support Specialist

Jamie Pottern, American Farmland Trust
New England Program Manager

Natashia Sawabi, USDA-Natural Resources Conservation Service
Natural Resource Specialist

Jasper Cowley, USDA-Natural Resources Conservation Service
Natural Resource Specialist

American Farmland Trust

**Saving the land that sustains us by:
protecting farmland,
promoting sound farming practices,
and keeping farmers on the land.**

USDA-Natural Resources Conservation Service

**NRCS is a federal agency that works
hand-in-hand with the people of
Massachusetts to improve and protect
soil, water and other natural resources.**

Outline

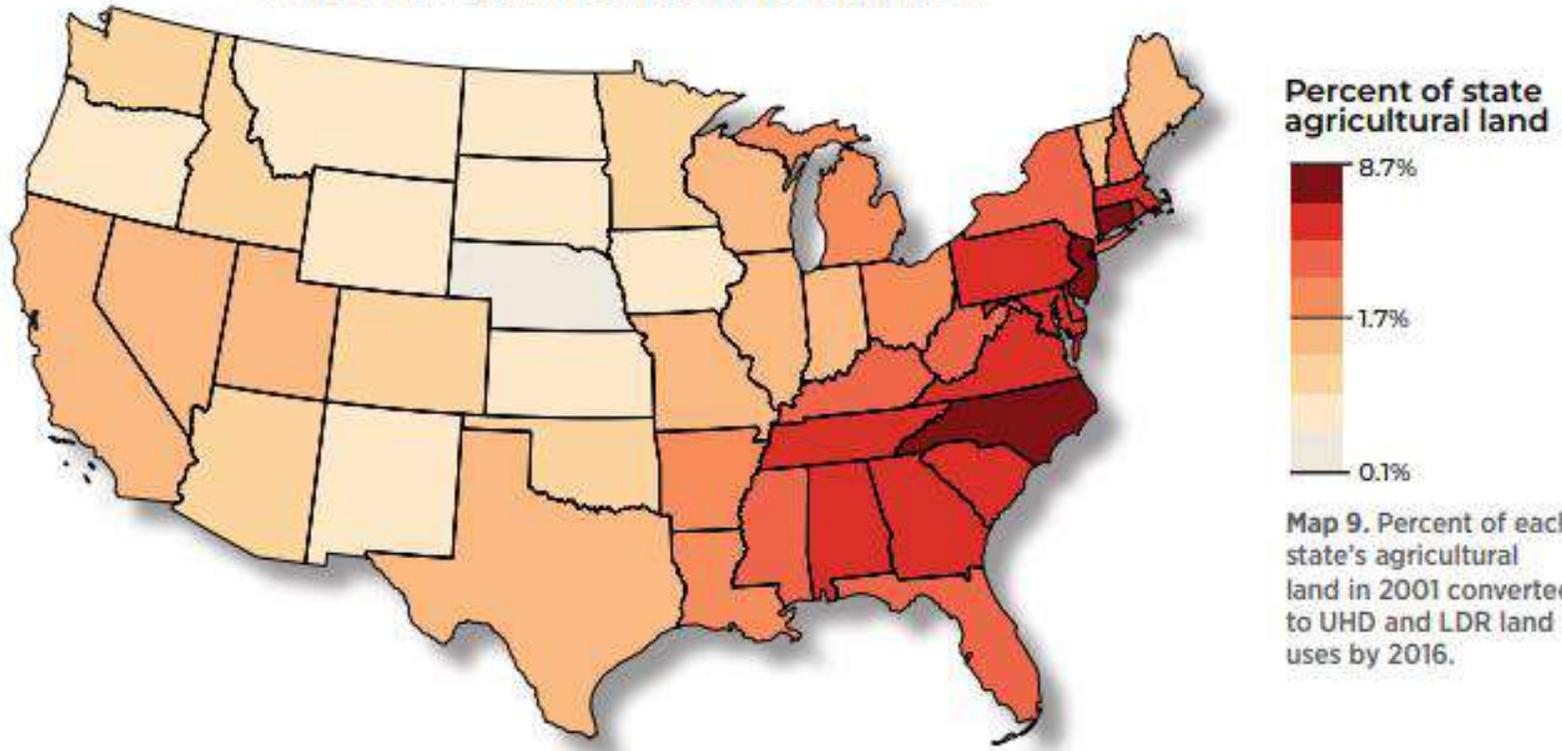
1. Why protect farmland?
2. Overview of farmland protection tools
3. Programs for permanent farmland protection
4. Additional resources for farmers
5. Opportunities to get involved



Why protect farmland?

Farmland loss

Percent Conversion to UHD and LDR



UHD = urban and highly developed land use
LDR = low-density residential land use

From 2001 to 2016, MA was 6th in the country for percentage of farmland converted.

(AFT [Farms Under Threat: State of the States](#), 2020)

From 2017 to 2022, MA lost 27,202 acres in farms (or 5.5%).

(USDA [Census of Ag](#), 2022)

Projected farmland loss

If recent trends continue,
MA will lose 73,800* acres
of farmland by 2040.
(AFT [Farms Under Threat 2040](#), 2022)

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

Percentage of Agricultural Land Projected to be Converted by 2040

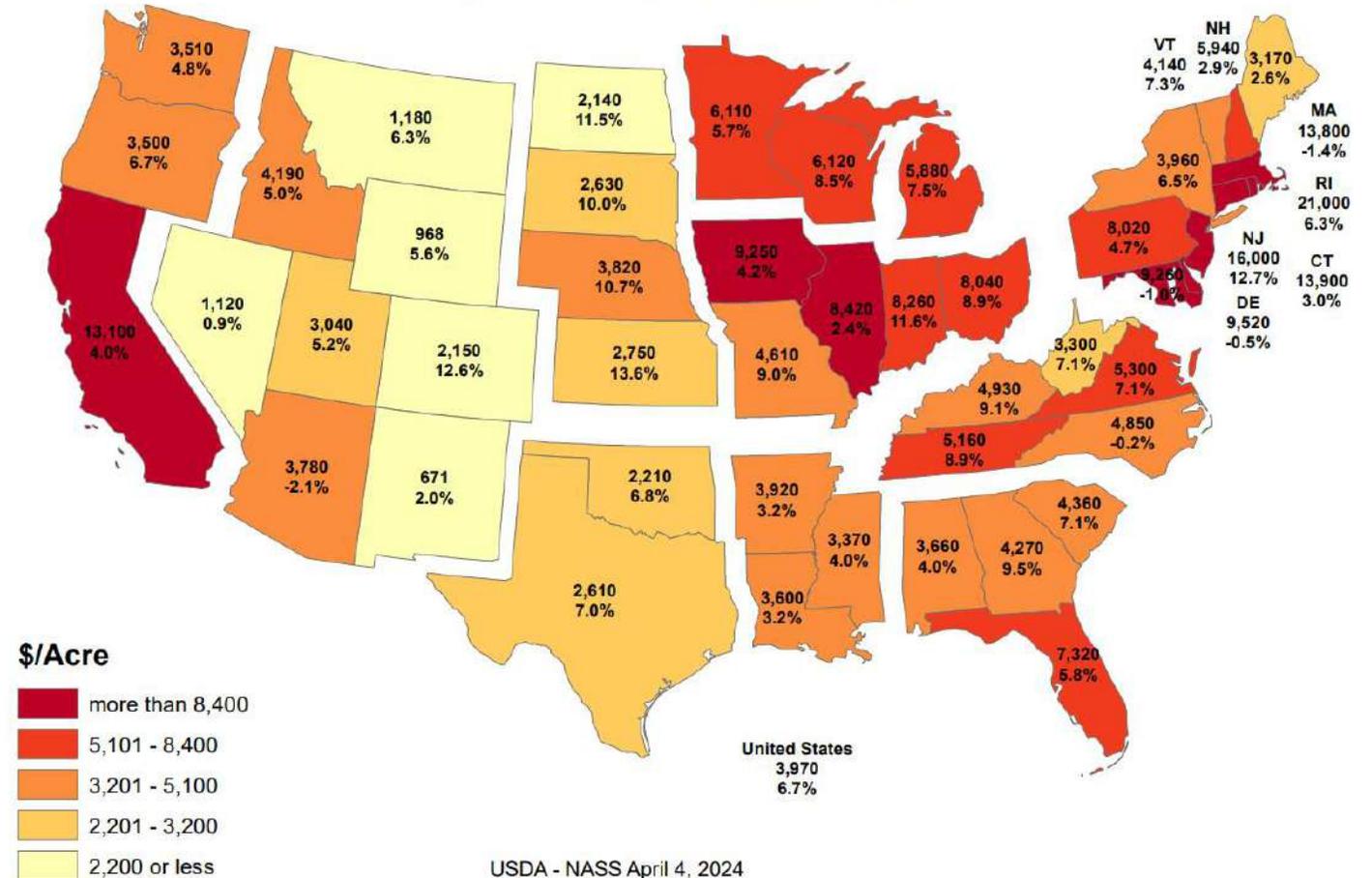
	Business as Usual	Runaway Sprawl	Better Built Cities
New Jersey	16.0	20.1	10.0
Connecticut	15.8	20.9	10.3
Massachusetts	14.8	17.9	10.0
Rhode Island	14.5	17.6	9.8
Delaware	12.5	16.6	8.1
North Carolina	11.6	16.2	6.4
New Hampshire	8.3	10.0	5.2
Tennessee	8.2	11.5	4.6
Maryland	7.8	10.8	4.3
South Carolina	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

Farmland affordability

At **\$13,800** per acre, MA has the 4th highest farm real estate values in the country.
([NASS](#), 2023)

Farmland protection is an important tool to keep farmland affordable!

2023 Farm Real Estate Value by State
Dollars per Acre and Percent Change from 2022





Overview of farmland protection tools



Farmland protection tools

- Short-term protection
 - MDAR Farm Viability Enhancement program
 - Chapter 61A
- Permanent protection
 - ➔ • APR or CR with farm-friendly terms (including OPAV and affirmative covenant)
 - Buy-Protect-Sell
 - Ground lease
- Local tools
 - ➔ • Farmland of Local Importance designation
 - Local planning tools (right-to-farm, zoning, etc.)

Farm-friendly CR/APR terms

- Purpose of CR/APR
 - Protect agricultural soils
 - Protect agricultural use and future ag viability
- Permitted uses/reserved rights
 - Agricultural structures, with limits on size and location
 - Commercial use, including agritourism
 - Dwellings, including farm worker housing (when possible)
- • CR/APR terms to enhance farm viability
 - OPAV (Option to Purchase at Ag Value)
 - Affirmative ag covenant
- Emerging issues
 - Solar development, subdivision, soil health, other issues?

Option to Purchase at Ag Value (OPAV)

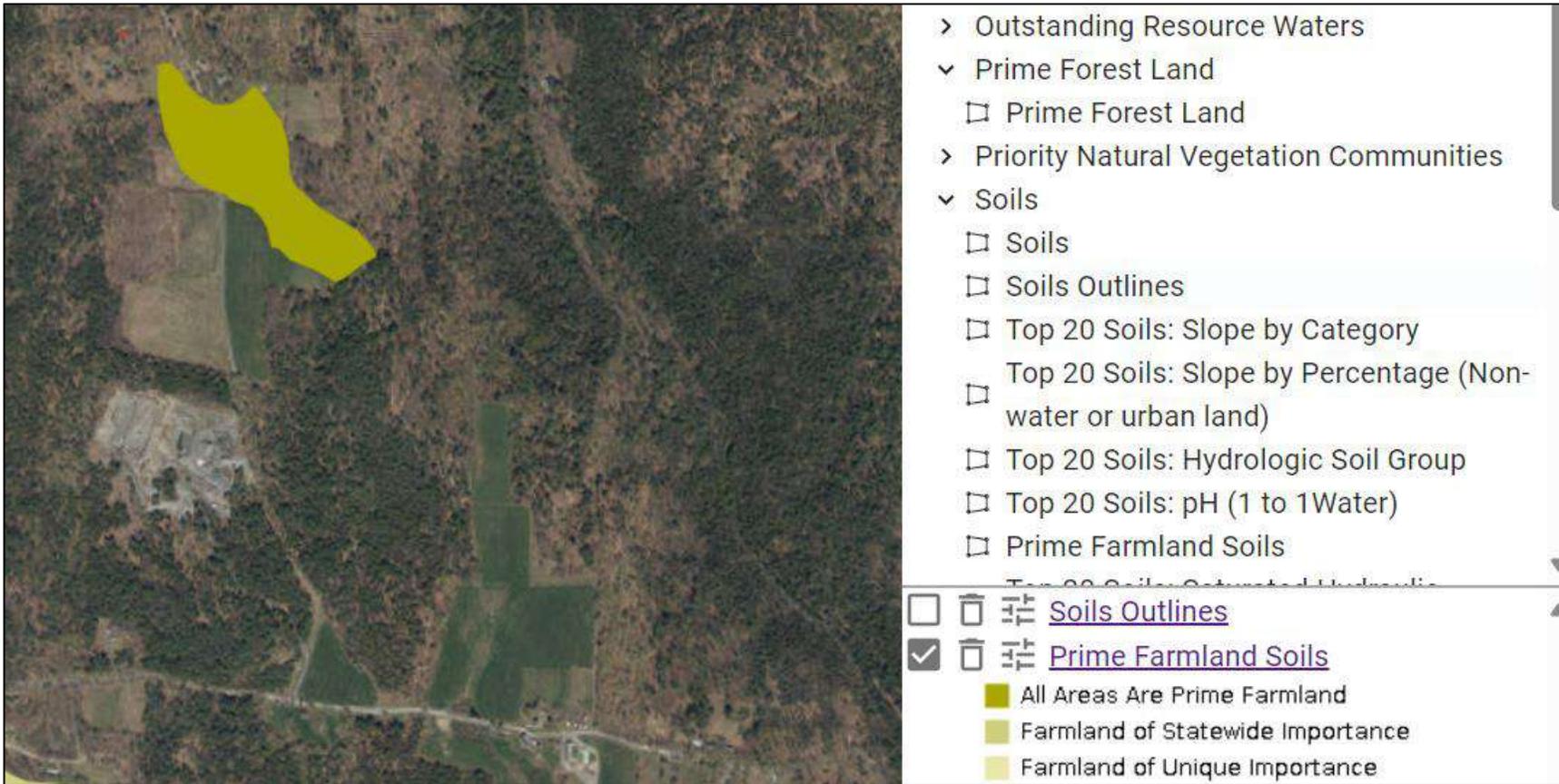
- Purpose: Promotes transfer of protected ag land to **farmers** at **agricultural value**
- Triggered by proposed sale/transfer of property
 - OPAV holder **intervenes in the sale** to ensure property transfers to a “qualified farmer” at the “agricultural value” as defined in the OPAV
 - Most OPAVs include some exemptions and waivers, e.g., sales to family members
- OPAV is required in MDAR APRs

Affirmative agriculture covenant

- Purpose: Ensure land that is protected as farmland **remains in agricultural production**
- **Requires commercial ag use**; above and beyond restricting non-ag uses
- Enforcement
 - If property is “abandoned” for 2+ years, it is considered a violation of the APR (for **MDAR-held APRs**)
 - Private APRs may have other enforcement mechanisms, e.g., if property is not farmed, the OPAV is triggered, forcing a sale to a new farmer

Farmland of Local Importance (FLI)

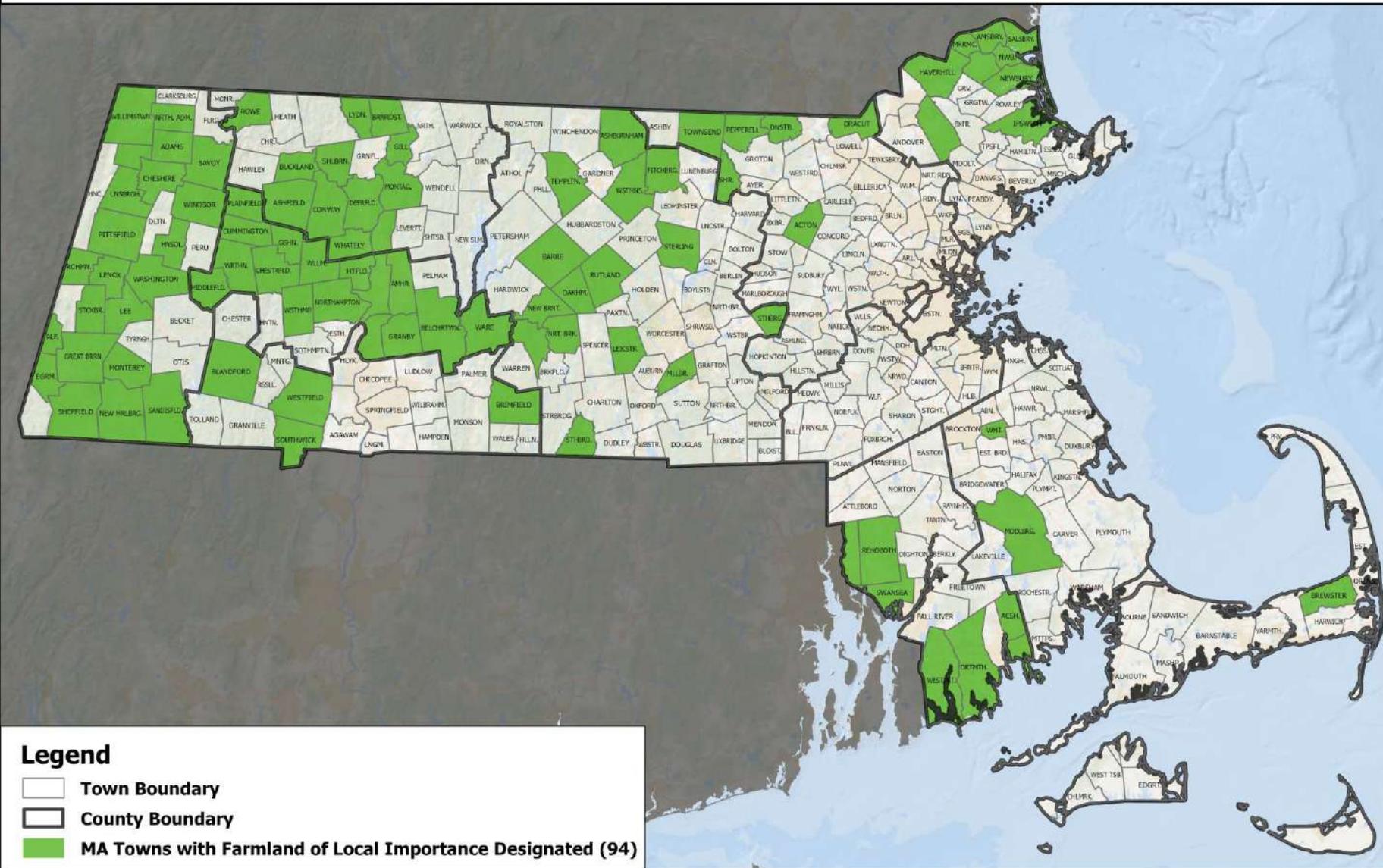
Many New England farms are growing crops in areas not identified as “[prime farmland soil](#).”



Farmland of Local Importance (FLI)

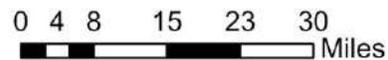
- Definition of FLI: Land/soils that are not recognized as prime/unique/statewide important farmland, but are **suited for crop production**
- Process of **designating FLI** soils
 - Municipality must formally recognize FLI soils (**town-by-town basis**)
 - NRCS soil scientists can help identify/designate FLI soils
 - FLI soils must meet certain “qualifiers” as evidence they are suitable for crop production (verified by NRCS on a **parcel-by-parcel** basis)
- Benefits: Farms with FLI can qualify for more land protection programs!

Massachusetts Towns with Farmland of Local Importance Designated



USDA Natural Resources Conservation Service
U.S. DEPARTMENT OF AGRICULTURE

USDA is an equal opportunity provider, employer, and lender.



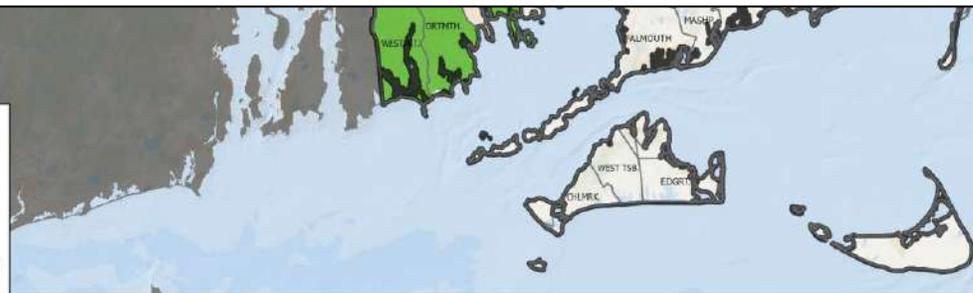
Last updated on 6/7/2024

Farms with FLI soils can qualify for more farmland protection programs!

[Current list of towns](#)

Legend

-  Town Boundary
-  County Boundary
-  MA Towns with Farmland of Local Importance Designated (94)





Programs for permanent farmland protection



Programs for permanent farmland protection

- State

- • APR (Ag Preservation Restriction)
- • Private APR
- Farm-friendly CR (Conservation Restriction) through EEA
- Conservation land tax credit (CLTC)

- Federal

- • ACEP-ALE (Agricultural Land Easements)
- ACEP-WRE (Wetland Reserve Easements)
- RCPP (Regional Conservation Partnership Program)

- Town

- CPA (Community Preservation Act)
- Chapter 61 (current use property tax program)

Ag Preservation Restriction (APR)



- Applicant = landowner, **holder = MDAR** (towns may co-hold)
- Funding:
 - Easement purchase and (most) transaction costs covered by MDAR (often with cost-share from NRCS)
 - May require 5-10% local match (or bargain sale)
- **Eligibility**: Similar to Chapter 61A
 - 5 acres minimum, 2+ years in commercial ag
 - \$500/year gross sales for first 5 acres, plus \$5 for each additional acre
 - Soils and open cropland are also considered in ranking

Ag Preservation Restriction (APR)



- Required terms
 - ACEP-ALE minimum deed terms are often required by MDAR
 - Ag buildings allowed but impervious surfaces are limited
 - **No dwellings**
 - OPAV (Option to Purchase at Ag Value)
 - Affirmative ag covenant (commercial ag required)

“Private” APR



- Applicant = landowner, **holder = land trust or town (not MDAR)**
- Funding:
 - **No funding from MDAR** for Private APRs currently
 - APR value may be donated by landowner, or may be raised through other grants or fundraising
- Required terms
 - **No easement template!** Land trust may develop its own easement terms
 - Affirmative ag covenant required, but not OPAV
 - Dwellings and farm buildings may be included
 - Approved and signed by Commissioner of MDAR, not Secretary of EEA

Agricultural Conservation Easement Program – Agricultural Land Easement (ACEP-ALE)



- Applicant = CR/APR holder (“entity”), working with a landowner
- Entity/landowner eligibility
 - Eligible entities include state or local governments, Indian tribes, or conservation nonprofits
 - Landowner must also be eligible for ALE
- Land eligibility
 - Parcel must be <math><2/3</math> forest land (waiver available for sugarcorn)
 - Generally, parcel must include >50% prime and important farmland soils (including FLI soils!). Other eligibility pathways may be available.
 - Intended for land owned by private individuals or Indigenous tribes
(land owned by any government or organization is not eligible)

Agricultural Conservation Easement Program – Agricultural Land Easement (ACEP-ALE)



- Funding
 - **NRCS provides up to 50%** of CR/APR fair market value
 - Remaining 50% is the responsibility of the entity (may be donated by landowner or raised by entity)
 - Transaction costs (title, appraisal, survey) paid by entity
- Required terms
 - **Minimum deed terms** must be incorporated in the closing deed
 - Dwellings and ag structures may be included, within a Building Envelope
 - Impervious surfaces limited (typically 2% without a waiver)
 - OPAV and affirmative ag covenant are allowed but not required

Agricultural Conservation Easement Program – Agricultural Land Easement (ACEP-ALE)



- Preparing an ALE application
 - Determine the parcel boundary at the beginning, including Building Envelopes
 - Submit maps to NRCS to confirm land eligibility (extra time may be needed to verify FLI soils, if present)
 - Written pending offer required (appraisal not required at time of application)
 - All landowners must work with NRCS and county Farm Service Agency
- Timing
 - Applications accepted any time; work with NRCS from the get-go!
 - Next batching date will be November 2024
 - Federal fiscal year is Oct 1 – Sept 30

Start early! Contact the NRCS State Office. AFT can help too!

Key differences: APR vs. ACEP-ALE

	APR (often uses ACEP-ALE)	Private APR (may use ACEP-ALE)	ACEP-ALE (when not part of APR transaction)
Land eligibility	Commercial farms >5 acres	>5 acres if in ag use >1 acre if in ag use with good soils and abutting other protected farmland	Parcels <2/3 forested, with >50% prime and important soils (usually); must be owned privately or by a tribe
Application	Landowner applies to MDAR	Landowner works with land trust/town	Entity applies to NRCS with landowner
CR/APR holder	MDAR holds APR; town may co-hold	APR held by land trust or town (not MDAR)	Entity holds CR/APR; includes U.S. right of enforcement

Key differences: APR vs. ACEP-ALE

	APR (often uses ACEP-ALE)	Private APR (may use ACEP-ALE)	ACEP-ALE (when not part of APR transaction)
Required terms	<u>MDAR required terms</u> (includes OPAV, affirmative ag covenant)	No easement template! APR must protect ag use and must include affirmative ag covenant	NRCS reviews easement to ensure <u>minimum deed terms</u> are incorporated
Structures	Farm buildings allowed; impervious surfaces limited; no dwellings	Dwellings and farm buildings may be included	Dwellings and farm buildings allowed within a Building Envelope; impervious surfaces limited
Local match \$	5-10% cash match or bargain sale	No funds available currently; may use ACEP-ALE and other funding sources	50% cash match or bargain sale; entity also pays transaction costs



Additional resources for farmers

Resources for farm practices

- Farm Bill programs from [USDA-NRCS](#)
 - Technical assistance and cost-share funding for a huge variety of farm practices
 - EQIP, AMA, CSP, CRP, CIG... the list goes on!
- [MDAR](#) grants and resources
 - Farm viability enhancement, APR improvement, climate smart ag, and more
- AFT [New England Climate & Agriculture](#) program
 - Farmer learning, technical assistance, grants, and more!

Resources for farm businesses

- [MDAR grants guide](#)
 - Food safety, farm energy, organic certification, and more!
- [Farm Credit East grants guide](#)
 - An extensive list of grants and incentives for Northeast agriculture

Resources for farmland access and succession planning

- [Land for Good](#)
 - Helping farmers with succession planning across New England
- [New England Farmland Finder](#)
 - For farmers searching for land, and landowners looking for farmers!
- [Legal Food Hub](#)
 - Free legal assistance for farmers offered by the Conservation Law Foundation

Resources for beginner farmers

- [AFT Farmer Resource Directory](#) – a list of grants and programs for farmers in New England
- [MDAR MEGA grant](#) and other programs
 - MDAR has grants and assistance for beginner farmers!
- [USDA-NRCS](#) has special provisions for historically underserved producers
 - Includes beginning farmers, veterans, socially disadvantaged farmers, and limited resource farmers
- [Farm Credit East](#) offers trainings and loans for beginner farmers

Resources for urban ag

- [MDAR Urban Ag program](#) and other programs
 - Yes, MDAR has funds for urban farmers, too!
- [USDA](#) has programs for urban farmers



Opportunities to get involved



Opportunities to get involved!

- Apply for farmland protection programs
 - MDAR APR: applications batched quarterly (accepted any time)
 - ACEP-ALE: applications batched in November 2024 (**start early!**)
- Encourage towns to adopt Farmland of Local Importance
 - More FLI soils → More farmland eligible for federal funding
- Stay in the loop!
 - MLTC Ag Conservation Working Group (email Jamie to get on the list)
 - NRCS Easements Sub-Committee (email Kathleen to get on the list)
 - Resources from the National Ag Lands Network (NALN)
- Make the case!
 - AFT Farms Under Threat is a great resource
 - **MA Farmland Action Plan was just released**



Contact us any time!



Presenters

Kathleen Doherty, kdoherty@farmland.org

American Farmland Trust, Farmland Easement Support Specialist

Jamie Pottern, jpotttern@farmland.org

American Farmland Trust, New England Program Manager

Natashia Sawabi, natashia.sawabi@usda.gov

USDA-Natural Resources Conservation Service, Natural Resource Specialist

Jasper Cowley, jasper.cowley@usda.gov

USDA-Natural Resources Conservation Service, Natural Resource Specialist