



Harvard
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A Division of the Center for Health Law and Policy Innovation

Rhode Island Land-Linking Program: Background Research and Policy Analysis

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ABOUT THE HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC

The Food Law and Policy Clinic of the Center for Health Law and Policy Innovation was established in 2010 as an experiential teaching program of Harvard Law School that links Harvard Law students with opportunities to work with clients and communities on various food law and policy issues. Clinic projects aim to increase access to healthy foods, prevent diet-related diseases, and assist small and sustainable farmers and producers in participating in local food markets.

For more information about the Harvard Law School Food Law and Policy Clinic, email flpc@law.harvard.edu or visit <http://blogs.law.harvard.edu/foodpolicyinitiative>.

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I. INTRODUCTION

The Rhode Island Food Policy Council (RIFPC) is a volunteer group of citizens that creates partnerships, develops policies, and advocates for improvements to the local food system in Rhode Island to expand its capacity, viability and sustainability. One of RIFPC’s main goals is to ensure that a “continuously increasing proportion of Rhode Island’s food supply will be grown, raised, caught, processed and distributed in Rhode Island.”² The Harvard Food Law and Policy Clinic (FLPC) partnered with RIFPC to assist the Council in developing and implementing policy priorities to improve Rhode Island’s food system. After engaging in several public brainstorming meetings and RIFPC policy committee meetings, the RIFPC identified the high cost of and limited access to farmland for new and expanding farmers as a barrier to increased production of Rhode Island-grown food. One method to counteract the dearth of affordable farmland is to create a land-linking program, which can connect new and expanding farmers to underutilized privately-owned and state and municipal land.

The following memorandum will provide background information, policy research and analysis to support RIFPC’s efforts to implement a land-linking program for public land in Rhode Island. It is important to note that while this report provides background materials and starts to identify key components of a land-linking program, the research was limited due to timing constraints. The Harvard FLPC intends to continue meeting with stakeholders and to develop more specific legislative recommendations in the spring of 2014.

Prior to proposing or creating a program, it is vital to understand the existing landscape of farmland preservation and land access in Rhode Island as well as the private and public land-linking programs implemented in other states and municipalities. Section II of the report will provide an overview of farmland access in Rhode Island, describing land access and preservation problems, and the successes and shortcomings of current legislative and programmatic efforts to promote farmland preservation and land access. It will then provide a short introduction to the major players working on farmland preservation in Rhode Island.

The state of Rhode Island has unique characteristics important to consider when designing a land-linking program, yet it need not start from scratch. The report will next describe existing state, municipal and non-profit land-linking efforts, generally categorizing them as private land-linking programs (for private land) and public land-linking (for public land), even though there is often overlap between these types of programs. Section III of the report will analyze land-linking programs for privately-owned lands operated by non-profits and state agencies, describing their operating structures, the services they provide, as well as challenges and benefits of the programs. Section IV addresses public land-linking programs, describing programs and policies connecting public land with farmers, and programs promoting urban

Key Terms

For the purpose of this report, we use the following definitions for key terms that will be used frequently throughout the report:

- **“Farmland preservation”** refers to methods which protect farmland, and also tend to make it more affordable and available.
- **“Farmland access”** represents various methods by which farmers can acquire land to farm, including connecting with landholders, purchasing and leasing.
- **“Land-linking”** is a strategy for farmland access, and includes both farmland listing functions to help farmers find land as well as additional wraparound services (e.g., technical assistance) to get them started farming.

² *Production*, RHODE ISLAND FOOD POLICY COUNCIL, <http://www.rifoodcouncil.org/productiongroup> (last visited Dec. 11, 2013).

agriculture. Section V of the report notes challenges that Rhode Island may face in implementing a private or public land-linking program, and then ends with specific recommendations, tying together Rhode Island's unique conditions with models in other states. The hope is that these recommendations will inform the Rhode Island Food Policy Council in developing its legislative proposal.

II. CURRENT LANDSCAPE OF LAND ACCESS IN RHODE ISLAND

A. Background

Rhode Island is the smallest state in the United States, and it is also the second most densely-populated state in the country.³ According to the Rhode Island Land Trust Council (RILTC), Rhode Island has lost over eighty percent of its productive farmland since the 1940s,⁴ and today less than seven percent of the state's land is productive farmland.⁵ In 1940, RI had over 300,000 acres of productive farmland; by 2010 only 67,800 acres remained in farms, with less than 40,000 of those in active agricultural production (the rest is woodlands and wetlands).⁶ Given the extensive loss of farmland, it is critical that Rhode Island focus both on preserving its existing farmland and finding ways of bringing new land into production.

In addition, the farms that do exist in Rhode Island are getting smaller. According to the U.S. Census of Agriculture, the average size of a farm in Rhode Island decreased from seventy-one acres in 2002 to fifty-six acres in 2007.⁷ In 2007, almost one-third of all farms in Rhode Island were less than ten acres.⁸ However, the number of farms in Rhode Island actually increased from 858 in 2002 to 1,219 in 2007, a jump of forty-two percent, which was the highest increase among New England states and ten times the national average.⁹ As one report noted, "[m]uch of this growth has been in the state's smallest farms."¹⁰ This increase in number of farms shows that there is extensive interest in starting farms in Rhode Island; much of this interest comes from young, inexperienced farmers who are eager to work in Rhode Island.¹¹ Unfortunately, given the loss of farmland and limited farmland available, these farmers are struggling to acquire sufficient land to farm.

One challenge is that Rhode Island's farmland is highly attractive to developers. The state's farmland tends to be ideal for development: it is leveled, cleared land and often includes amenities such as views of the ocean or proximity to the coast.¹² From 1982 to 2007, Rhode Island converted nearly thirty

³ U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: TABLE 14: STATE POPULATION – RANK, PERCENT CHANGE, AND POPULATION DENSITY: 1980 TO 2010 19 (2012), *available at* <http://www.census.gov/compendia/statab/2012/tables/12s0014.pdf>

⁴ RHODE ISLAND LAND TRUST COUNCIL, FARMRI 2.0: CRAFTING THE NEW GENERATION OF INITIATIVES FOR SAVING RHODE ISLAND'S WORKING FARMS 10 (2010) [hereinafter FARMRI 2.0: INITIATIVES], *available at* http://www.rilandtrusts.org/documents/FarmRI_2.0_Final.pdf.

⁵ *Id.* at 10.

⁶ RHODE ISLAND LAND TRUST COUNCIL, FARMRI 2.0: REPORT FOR COMMUNITY LEADERS 2 (2010) [hereinafter FARMRI 2.0: COMMUNITY LEADERS], *available at* <http://www.rilandtrusts.org/documents/FarmRI-2-0-Report-for-Community-Leaders.pdf>.

⁷ FARMRI 2.0: INITIATIVES, *supra* note 4, at 10.

⁸ *Id.* at 10.

⁹ RHODE ISLAND AGRICULTURAL PARTNERSHIP, A VISION FOR RHODE ISLAND AGRICULTURE: FIVE-YEAR STRATEGIC PLAN 4 (2011) [hereinafter FIVE-YEAR STRATEGIC PLAN], *available at* http://www.farmland.org/documents/RI_agriculture_5yr_strategicplan.pdf. (Internal citation omitted).

¹⁰ *Id.*

¹¹ The Young Farmer Night hosted by Young Farmers Network draws twenty-five to thirty farmers from RI and Southern MA every other week. Jamie Coelho, *On the Farm with Pasture to Plate*, RHODE ISLAND MONTHLY, Sept. 2013, <http://www.rimonthly.com/Blogs/ridaily/September-2013/On-the-Farm-with-Pasture-to-Plate/>.

¹² FARMRI 2.0: INITIATIVES, *supra* note 4, at 12.

percent of its prime agricultural land into buildings and development projects, more than any other state.¹³

What little farmland is available tends to be incredibly expensive both to purchase and to lease, and therefore unaffordable to the average new and small-scale farmer. In 2010, Rhode Island farmland cost an average of \$13,600 per acre to purchase, the highest cost in the nation.¹⁴ This price is almost triple the average value of \$4,690 per acre for farmland in the Northeast, and more than six times the national average of \$2,140.¹⁵ Many of the farmers seeking land are young, entrepreneurial and excited, but they lack access to capital.¹⁶ Even if new and beginning farmers had access to sufficient capital to purchase land at these high prices, they would be unlikely to generate sufficient income to cover the mortgage costs.¹⁷

These trends are troubling, as farmland and local agriculture are beneficial to communities. Local agriculture generates jobs and spurs the state's economy, contributing an estimated \$100 million to Rhode Island each year.¹⁸ It also helps ensure food security by serving as a source of reliable and nutritious produce. In addition, farms foster a sense of place, community and identity by serving as local landmarks and tourist attractions and providing social offerings, such as corn mazes, hay rides and farmers markets.¹⁹ In urban settings, farms offer much-needed green space. Farms can also further conservation and environmental aims by providing habitat for endangered and threatened species, filtering and retaining groundwater, and preventing flooding. Given the renewed interest in farming among young adults, encouraging agriculture in the state can also help Rhode Island attract and retain young people—critical for a state that lost ten percent of its prime working-age population between 2006 and 2012.²⁰ Lastly, farmland can help municipalities' bottom lines because farms require minimal municipal services. Indeed, studies find that farms require less than fifty cents in services for every one dollar they pay in property taxes, a boon to cash-strapped local governments.²¹ For all these reasons, it is in the state's best interest to help preserve farmland and to support new and beginning farmers.

B. Current Legislative Strategies that Address Farmland Preservation

Farmland preservation is essential to ensure farmers have access to farmland and that farmland stays affordable. If farmland is not preserved and is instead developed, the stock of farmland decreases leading to decreased farmland access for new and expanding farmers and increased average farmland prices. In the early 1980s, Rhode Island recognized that development pressure was leading to a precipitous decline in the state's farmland and concomitant decreases in land access. Farmers banded together, and with help from the Rhode Island Farm Bureau (RIFB), worked with the state legislature to pass several landmark pieces of legislation to support farmers.²² Currently, there are three legislature-created programs preserving farmland: (1) the State Agricultural Land Preservation Program, (2) the Right to Farm Law, and (3) Farm, Forest and Open Space Taxation; in addition the state issues Open Space Bonds to fund the Agricultural Land Preservation Program. Since 1985, these legislative programs

¹³ FIVE-YEAR STRATEGIC PLAN, *supra* note 9, at 10.

¹⁴ FARMRI 2.0: COMMUNITY LEADERS, *supra* note 6, at 2.

¹⁵ *Id.*

¹⁶ Coelho, *supra* at 11.

¹⁷ FARMRI 2.0: INITIATIVES, *supra* note 4, at 12.

¹⁸ FIVE-YEAR STRATEGIC PLAN, *supra* note 9, at 5.

¹⁹ *Id.*

²⁰ Ted Nesi, *RI has lost 10% of its prime working-age population since 2006*, WPRI.COM, <http://blogs.wpri.com/2013/03/04/ri-has-lost-10-of-its-prime-working-age-population-since-2006/> (defining prime working-age population as adults aged 25 to 54).

²¹ FARMRI 2.0: INITIATIVES, *supra* note 4, at 13.

²² FIVE-YEAR STRATEGIC PLAN, *supra* note 9, at 3.

in conjunction with the work of land trusts have protected more than 10,000 acres of farmland, over a quarter of the state's remaining stock; however, 30,000 acres are still at risk.²³

1. State Agricultural Preservation Program – Pursuant to Rhode Island General Law 42-82 (Farmland Preservation Act), the State Agricultural Preservation Program purchases development rights from farmers, enabling them to retain ownership of their property and continue to farm the land.²⁴ Purchasing the development rights gives farmers a financially competitive alternative to development and also provides them with capital to re-invest in their farms, finance retirement or pay family expenses.²⁵ Purchasing development rights can also facilitate transfer of farmland to a child or heir by decreasing property and estate taxes.²⁶ This program is responsible for about sixty-five percent of the 10,000 acres currently protected.²⁷

Because there is more demand for the program than there is capacity, a farmer must submit an application to the Agricultural Land Preservation Commission (ALPC) to be considered. The ALPC, a quasi-government agency which administers the program, accepts applications for preservation year-round, and evaluates and scores the applications based on criteria such as parcel size, soil quality, agricultural operation and viability, relative development pressure, and cultural and scenic features, among others.²⁸

The funding for this farmland preservation comes from a variety of sources including federal, state and local funding, and donations. A significant portion of the funding comes from the state, via periodic Open Space Bonds (debt obligations issued by the state, described in detail below).²⁹ The state has leveraged this bond funding to attract more than \$38.5 million from other sources, including federal farmland protection funding, and contributions from municipalities, foundations, land trusts, and other conservation organizations and individual donors.³⁰ The Federal Farmland Protection Program provides farmland protection grants to states if they can match fifty percent of the federal government's funding; since 2000, this federal program has provided \$11.5 million to support the ALPC's efforts.³¹ Nearly every farm conservation project includes contributions from multiple sources.³²

Unfortunately, the amount and pace of the funding has never been sufficient to meet the demand for the ALPC's farmland preservation support.³³ Periodic bond referenda, the program's main funding source, are inconsistent and unpredictable, and the amount provided by the bonds is inadequate.³⁴ If the program continues to be funded at its current pace, it will take 110 years to protect all the

²³ FARMRI 2.0: COMMUNITY LEADERS, *supra* note 6, at 5.

²⁴ *Farmland Ecology*, RI DEP'T OF ENVIRON. MGMT. DIV. OF AGRIC. (Aug. 17, 2012), <http://www.dem.ri.gov/programs/bnatres/agricult/ecology.htm>.

²⁵ FIVE-YEAR STRATEGIC PLAN, *supra* note 9, at 20.

²⁶ *Id.*

²⁷ FARMRI 2.0: INITIATIVES, *supra* note 4, at 16.

²⁸ *Farmland Preservation Program*, RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, <http://www.dem.ri.gov/programs/bnatres/agricult/ecology.htm> (last visited Nov. 29, 2013).

²⁹ The 2012 statewide open space bond for \$20 million passed with 70 percent approval. *Rhode Island LandVote Data*, THE TRUST FOR PUBLIC LAND, <http://www.conservationalmanac.org/secure/almanac/west/ri/lvdata.html> (last visited Nov. 29, 2013). \$4.5 million of that will go to farm protection. RHODE ISLAND, AMERICAN FARMLAND TRUST, <http://www.farmland.org/programs/states/ri/default.asp> (last visited Nov 29, 2013).

³⁰ FARMRI 2.0: INITIATIVES, *supra* note 4, at 16.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 15.

³⁴ *Id.* at 7.

remaining acres of farmland in Rhode Island.³⁵ Moreover, a 2010 RILC report noted that the program provides insufficient outreach, education and assistance to farmers.³⁶ The report further noted that Rhode Island Department of Environmental Management (RIDEM) tends to focus on farms in crisis—protecting the farmland of a farmer who has died or is having financial problems—rather than taking a more proactive and holistic view to protect farms that are most valuable or productive.³⁷ It also faulted the program for not ensuring that the farmland stays in production after it is protected,³⁸ and for failing to maintain farmland affordability for plots with a house or housing lot (even without development rights, plots with houses sell at prices higher than general farmland value).³⁹

The state’s Farmland Preservation Program belongs to the “first generation” of the nation’s farm conservations programs, and over the years these programs have shown their limitations.⁴⁰ Other states have revised their initial farmland protection programs and developed new initiatives to respond to ongoing challenges similar to those described above.⁴¹ In Rhode Island, non-profit organizations and the Division of Agriculture within RIDEM have created new initiatives and programs; however the Rhode Island General Assembly has not revised the state’s Agricultural Preservation Program since its adoption in 1981.⁴²

2. Right to Farm Law – In 1982, Rhode Island passed a Right to Farm Law.⁴³ This law protects farms from nuisance claims, and particularly from nuisance claims “arising out of conflicts between agricultural operations and urban land uses.”⁴⁴ In its legislative findings, the statute explicitly includes farmland preservation as a goal, explaining that conflicts between land uses “threaten to force the abandonment of agricultural operations and the conversion of agricultural resources to non-agricultural land uses.”⁴⁵ The law does not address the high cost of farmland, which is a major driver of farmland conversion.

3. Farm, Forest and Open Space Taxation – Rhode Island state legislation provides for property tax discounts for farms, forest, and certain types of open space.⁴⁶ Under this program, farmers receive a lower tax assessment on their land, and the resulting tax savings helps keep agriculture economically viable and serves as an incentive to keep the land in production. While this tax discount does assist in decreasing costs once a farmer has land—and therefore helps prevent development of existing farmland—its impact is likely minimal, and the tax discount does not help keep farmland affordable for new and beginning farmers.

4. Open Space Bonds – While open space bonds are not themselves a legislative strategy or program, Rhode Island uses them to raise capital to fund the state’s Agricultural Land Preservation Program. States and municipalities often issue bonds to finance their infrastructure and public works needs. Rhode Island and many other states use state bonds to fund the preservation of open space, including agricultural land. Under Chapter 241 of the RI General Laws, bond issuance is always put before voters

³⁵ *Id.* at 17.

³⁶ *Id.* at 17–18.

³⁷ *Id.* at 17.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*; *Farmland Ecology*, RI DEP’T OF ENVIRON. MGMT. DIV. OF AGRIC. (Aug. 17, 2012),

<http://www.dem.ri.gov/programs/bnatres/agricult/ecology.htm>. It is important to note, however, that not all changes to the State’s Agricultural Protection Program must come about via legislation. RIDEM and ALPC may be able to increase the program’s effectiveness without additional enabling legislation.

⁴³ R.I. GEN. LAWS ANN. § 2-23-1 to 2-23-7 (West 2013).

⁴⁴ R.I. GEN. LAWS ANN. § 2-23-3 (West 2013).

⁴⁵ R.I. GEN. LAWS ANN. § 2-23-2 (West 2013).

⁴⁶ R.I. GEN. LAWS ANN. § 44-3-33.2 (West 2013).

as a statewide referendum question.⁴⁷ Rhode Island voters have never rejected an open space bond issue.⁴⁸ In 2012, Rhode Island voters approved \$20 million in environmental management bonds.⁴⁹ \$2.5 million of that went to “State Land-Acquisition – Open Space” to purchase “land, development rights and conservation easements,”⁵⁰ and \$4.5 million went to fund the purchase of “Farmland Development Rights” supporting the State’s Farmland Preservation Program.⁵¹ The referendum passed with seventy percent approval.⁵² The use of the 2012 bond money is expected to commence in 2014 and be completed by 2020.⁵³ The Governor and the Rhode Island House decide how much of the bond appropriation to spend each year.⁵⁴

C. Other Tools & Strategies to Address Farmland Preservation & Land Access

Aside from legislative programs, there are other efforts and proposed projects within Rhode Island aimed at preserving farmland and ensuring land access. These projects are spearheaded both by non-profit organizations and state agencies. They include a farmland listing website, a proposal for a non-profit field agent to assist with farmland acquisition and succession, and an additional proposed RIDEM-led farmland preservation program.

1. New England Farmland Finder (NEFF): A consortium of non-profit, state and institutional stakeholders came together to create the New England Farmland Finder, an online portal to connect New England farmland-seekers and farmland-owners.⁵⁵ The online tool serves as a clearinghouse for landholders—private, organizational, and public (municipal and state)—to post farm properties that are available, and farmland-seekers to search through available properties. NEFF includes farms and farmland from across the New England region. The site is free, simple to use and automated to keep postings up-to-date. NEFF was intentionally developed to post farm properties.⁵⁶ Based on their research and experience, the groups that developed NEFF determined that it would be most effective to separate a regional listing of farm properties from the support services for farm seekers and landowners. Those services include education, tools and ongoing support on such topics as leasing, land assessment, and financing.⁵⁷ In the NEFF developers’ vision, NEFF would synchronize and partner with existing land linking, beginning farmer and landowner programs in the region, thereby avoiding resource-demanding duplication.⁵⁸

2. On-the-ground support for farm seekers and landowners: While NEFF and farm property lists are necessary, they are not sufficient to ensure land access. As mentioned above, farmers and landowners need information and technical assistance to “make good matches,” make more land available, and

⁴⁷ STATE OF RHODE ISLAND, RHODE ISLAND VOTER INFORMATION HANDBOOK 2012 16 (2012) [hereinafter VOTER INFORMATION HANDBOOK], available at http://sos.ri.gov/documents/elections/VoterHandbook_2012.pdf.

⁴⁸ OLR RESEARCH REPORT, RHODE ISLAND’S OPEN SPACE PRESERVATION PROGRAM (2004) [hereinafter OLR RESEARCH REPORT], available at <http://www.cga.ct.gov/2004/rpt/2004-R-0560.htm>

⁴⁹ VOTER INFORMATION HANDBOOK, *supra* note 47, at 16.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Rhode Island LandVote Data*, THE TRUST FOR PUBLIC LAND, <http://www.conservationalmanac.org/secure/almanac/west/ri/lvdata.html> (last visited Nov. 29, 2013).

⁵³ VOTER INFORMATION HANDBOOK, *supra* note 47, at 16.

⁵⁴ OLR RESEARCH REPORT, *supra* note 48.

⁵⁵ NEW ENGLAND FARMLAND FINDER, <http://newenglandfarmlandfinder.org> (last visited Nov. 27, 2013).

⁵⁶ Telephone Interview with Kathy Ruhf, Executive Director, Land for Good (Nov. 25, 2013) [hereinafter Telephone Interview with Kathy Ruhf, November].

⁵⁷ *Id.*

⁵⁸ *Id.*

address affordability and security. Land For Good is a non-profit organization that helps farmers and communities navigate the complexities of land access, tenure and transfer. Currently, the organization has field agents that serve seekers, transitioning farm families and landowners throughout New England, but there is no field agent located in and specifically assigned to Rhode Island.⁵⁹ These field agents meet with farmers individually to provide technical assistance to new farmers and help retiring farms plan for retirement and succession. These field agents provide individual consultations, as well as assistance crafting documents and coaching.⁶⁰ Land For Good field agents also host public workshops and meetings where farmers can learn about land access and meet with farmers in similar situations.⁶¹

RIDEM representatives have talked with Land For Good about hiring a field agent in Rhode Island, to enhance Land For Good's capacity in the state and to support RIDEM's goal of addressing farmland access challenges in Rhode Island.⁶² This field agent would reach out to people who own land that has agriculture potential, and assist older farmers with transition and estate planning and new farmers with land access and acquisition.⁶³ Land For Good continues to dialogue with leaders in Rhode Island about funding for a Rhode Island field agent, but none has been secured at the publication of this report.⁶⁴

3. Proposed RIDEM "Buy, Protect, Sell" Program: According to Michelle Sheehan, State Land Conservation Program Assistant, RIDEM is also in the process of creating a new farmland preservation program modeled after Maine Farmland Trust's "Buy/Protect/Sell" program.⁶⁵ In this program, RIDEM would purchase farms, restrict development rights, and then sell the land affordably to farmers at the farm's agricultural value as opposed to its development value. The program will bring in some revenue, as farmers will buy the land from the state; however because the state will purchase land at the market rate and sell it to farmers at an affordable rate, the program will need outside funding.⁶⁶ RIDEM is planning to use open space bonds (as described above) to fund this program.⁶⁷

4. Rhode Island Land Trust Council (RILTC) Survey and Outreach to Land Trusts: In 2010, RILTC embarked on a survey to determine how many land trusts protected agricultural land and to investigate the barriers keeping land trusts from placing more land in agricultural production.⁶⁸ After extensive mail and phone surveys, RILTC determined that twenty-five land trusts were protecting farmland and keeping it in agricultural use, and more than half of these leased their land for specialty crops. Moreover, with very few exceptions, farmland owned by land trusts was currently in production.⁶⁹ RILTC determined that a general land-linking program was not necessary—most land trusts had already been approached by farmers looking for land—but a linking program for farmers who want to raise nut trees and specialty crops may be helpful.⁷⁰ RILTC also developed a handbook for land trusts, municipalities and institutions that described how to lease land they owned to farmers and included a checklist and model lease documents.⁷¹ RILTC also performed outreach to land trusts leaders and conducted three workshops in

⁵⁹ *Id.*

⁶⁰ *Individual Consulting*, LAND FOR GOOD, <http://landforgood.org/how/consulting> (last visited Jan. 21, 2014).

⁶¹ *Are you looking for farmland in northern NH?*, LAND FOR GOOD, <http://landforgood.org/looking-farmland-northern-nh>.

⁶² Telephone Interview with Kathy Ruhf, November, *supra* note 56.

⁶³ Telephone Interview with Michelle Sheehan, Assistant to State Land Conservation Program, RIDEM (Nov. 19, 2013) [hereinafter Telephone Interview with Michelle Sheehan, November].

⁶⁴ Telephone Interview with Kathy Ruhf, November *supra* note 56.

⁶⁵ Telephone Interview with Michelle Sheehan, November, *supra* note 63

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ RHODE ISLAND LAND TRUST COUNCIL (RILTC), RHODE ISLAND FARM VIABILITY – SPECIALTY CROP GRAN 12-25-B-0947 FINAL REPORT – MAY 2012 2 [hereinafter FARM VIABILITY] (on file with the authors).

⁶⁹ *Id.* at 5.

⁷⁰ *Id.* at 6.

⁷¹ *Id.* at 4, 9.

2010 and 2011 aimed at providing land trusts with information on how to lease to farmers.⁷² As a result of this outreach, two land trusts are working with the RILTC to move their farmland towards more productive, specialty crop production.⁷³

D. Major Players

There are a variety of stakeholders actively working on farmland preservation and other land conservation efforts in Rhode Island. These groups range from state legislators and state agencies to local non-profit organizations and advocacy groups. As we consider how to develop a new land-linking program, it is important to understand the groups currently engaged in the issue. To succeed, any new land-linking program must actively cooperate and coordinate with existing stakeholders. Below is a list of major players in the Rhode Island agriculture community that we have identified; however there are likely many more organizations and individuals actively working in the area that we have missed.

Government Actors:

- **Rhode Island General Assembly** – The state legislature must pass and fund all legislation to promote farmland preservation. The Assembly meets about three times per week from January to June each year.⁷⁴ The Assembly typically passes the state budget at the end of the term before the Fiscal Year begins in July.⁷⁵
- **Agricultural Lands Preservation Commission (ALPC)** – The ALPC is a quasi-legislative body created in 1981 pursuant to Rhode Island General Laws 42-82 (Farmland Preservation Act).⁷⁶ The ALPC is responsible for administering the Farmland Preservation Act, the current major farmland preservation strategy in Rhode Island (explained above on page 4).⁷⁷ The Commission protects farmland by acquiring the development rights to farmland in Rhode Island.⁷⁸ It meets monthly to review applications for preservation support.
- **Rhode Island Department of Environmental Management (RIDEM)** – RIDEM oversees agriculture and farming in the state. Within RIDEM, the Division of Agriculture focuses on farmland preservation, collaborating with ALPC. Kenneth Ayers (Chief of the Division of Agriculture), Michelle Sheehan (State Land Conservation Program Assistant), and Elizabeth Peterman (Senior Environmental Planner) all work on farmland preservation.

Non-Governmental Groups:

- **Conservation Districts** – Conservation districts are state mandated, quasi-public entities working in the areas of forestry and agriculture to reduce erosion and non-point source pollution and protect natural resources. The Districts are not state funded; instead they receive their funding from a variety of sources including Providence Water and the U.S. Department of Agriculture's

⁷² *Id.* at 10.

⁷³ *Id.*

⁷⁴ Kenneth Block, chairman of Rhode Island's Moderate Party, says 11 state legislatures meet for three months and 5 meet biennially, POLITIFACT RHODE ISLAND (Dec. 16, 2012), available at <http://www.politifact.com/rhode-island/statements/2013/jan/08/kenneth-block/kenneth-block-chairman-rhode-islands-moderate-part/>.

⁷⁵ *Budget Primer*, STATE OF RHODE ISLAND BUDGET OFFICE, <http://www.budget.ri.gov/primer/> (last visited Nov. 29, 2013).

⁷⁶ *Farmland Preservation Program*, RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, <http://www.dem.ri.gov/programs/bnatres/agricult/ecology.htm> (last visited Nov. 29, 2013).

⁷⁷ *Farmland Ecology*, RI DEP'T OF ENVIRON. MGMT. DIV. OF AGRIC. (Aug. 17, 2012), <http://www.dem.ri.gov/programs/bnatres/agricult/ecology.htm>.

⁷⁸ *Id.*

Natural Resources Conservation Service.⁷⁹ There are three conservation districts in Rhode Island: Northern (covering Providence County), Southern (covering Kent and Washington counties) and Eastern (covering the state's islands and the East Bay).⁸⁰ Conservation Districts are not regulatory agencies, but rather provide assistance and work in partnership with farmland-owners, farmers, municipalities, non-profits and state and federal agencies.⁸¹

- **Land For Good** – Land For Good is a non-profit organization providing guidance and support since 2004 to help “farmers, landowners and communities navigate the complex challenges of land access, tenure, and transfer.”⁸² The organization is headquartered in New Hampshire, but it works in all six New England states. Land For Good operates on a variety of different scales, from working with individual farmers and landholders to partnering with regional and national organizations.⁸³
- **Local Land Trusts** – Land trusts are nonprofit organizations that protect land and preserve open spaces, natural areas and farmlands, oftentimes in order to maintain the character of their communities or states. Land trusts permanently steward and defend the conservation easements and land that they hold. For example, the Southside Community Land Trust (SSCLT) actively reclaims land in the Greater Providence area and re-purposes the land for urban farms and gardens.⁸⁴ As of 2011, SSCLT has preserved and transformed fifty-five acres of land and created thirty-five community gardens.⁸⁵ Currently, there are over forty-five land trusts in the state of Rhode Island.⁸⁶ Most of these land trusts are private, non-profit 501(c)(3) organizations; however eighteen are affiliated with municipal governments.⁸⁷ Only seven of the forty-five have paid staff; the others are volunteer-run.⁸⁸ Five land trusts have also started farmer's markets to support agriculture in their community.⁸⁹
- **New England Farmers Union (NEFU)** – New England Farmers Union is a membership organization committed to enhancing the quality of life of farmers, fisherman, nurserymen and their customers.⁹⁰ NEFU engages in lobbying and legislative advocacy with member farmers and fishermen driving policy positions.⁹¹ NEFU engages with New England elected officials and public agencies, asking them to implement and enforce laws and regulations that can strengthen New England's farms and fisheries. NEFU has 1,500 members.⁹²
- **Rhode Island Agricultural Partnership (RhodyAg)** – The Rhode Island Agricultural Partnership is a group of dedicated professionals seeking to foster the economic viability of the state's

⁷⁹ Telephone Interview with Kate Sayles, Agriculture and Forestry Technician, Northern Rhode Island Conservation District (Jan. 7, 2013).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *About*, LAND FOR GOOD, <http://landforgood.org/about/> (last visited Nov. 27, 2013).

⁸³ *Projects*, LAND FOR GOOD, <http://landforgood.org/our-work/projects/> (last visited Nov. 27, 2013).

⁸⁴ SOUTHSIDE COMMUNITY LAND TRUST, <http://www.southsideclt.org> (last visited Dec. 15, 2013).

⁸⁵ *Celebrating Thirty Years*, SOUTHSIDE COMMUNITY LAND TRUST, <http://www.southsideclt.org/30years> (last visited Dec. 15, 2013).

⁸⁶ *Rhode Island's Land Trusts*, RHODE ISLAND LAND TRUST COUNCIL, <http://www.rilandtrusts.org/landTrusts.htm> (last visited Nov. 29, 2013).

⁸⁷ *Id.*

⁸⁸ RHODE ISLAND LAND TRUST COUNCIL, <http://www.rilandtrusts.org/landTrusts.htm> (last visited Nov. 29, 2013).

⁸⁹ E-mail from Rupert Friday, Dir., Rhode Island Land Trust Council to Molly Cohen, Student, Harvard Food Law and Policy Clinic (Jan. 13, 2014, 9:40 a.m. EST) (on file with authors).

⁹⁰ *About Us*, NEW ENGLAND FARMERS UNION, <http://www.newenglandfarmersunion.org/about-us/> (last visited Jan. 13, 2014).

⁹¹ *Id.*

⁹² *Our Members*, NEW ENGLAND FARMERS UNION, <http://www.newenglandfarmersunion.org/about-us/our-members/> (last visited Jan. 13, 2014).

agricultural producers in the face of growth, development and economic pressure.⁹³ Members of the Steering Committee include farmers, representatives of state agencies and agricultural land trusts, and land-use advocates. In 2011, the group published a Five-Year Strategic Plan for Rhode Island's Agriculture.⁹⁴

- **Rhode Island Farm Bureau (RIFB)** – RIFB is an independent, non-governmental, voluntary organization of farmers and ranchers.⁹⁵ The organization works on statewide projects to promote agriculture and to analyze problems facing its members and formulate solutions designed to improve the well-being of the state's farmland and farmers.⁹⁶ Concerned about the high-price of farmland and the extensive development pressures, RIFB actively works to keep farmland affordable and in production by drafting reports, creating legislative suggestions, and lobbying the state legislature.⁹⁷
- **Rhode Island Food Policy Council (RIFPC)** – RIFPC is a volunteer group of citizens that creates partnerships, develops policies, and advocates for improvements to Rhode Island's food system to increase and expand its capacity, viability and sustainability. Because one of the Council's four goals involves increasing production of local food, the Council is deeply invested in ensuring that Rhode Island supports farmers and local agriculture.
- **Rhode Island Land Bank** – The Rhode Island Land Bank currently acquires and holds undeveloped properties for up to twelve months that will be developed as affordable housing.⁹⁸ While the Land Bank currently has a narrow development-based focus, in other states Land Banks are used to hold and protect farmland to promote agriculture.⁹⁹ If the legislature expanded the scope of the Land Bank's work, there is potential that the Land Bank could become a player in increasing access to farmland.
- **Rhode Island Land Trust Council (RILTC)** – The Rhode Island Land Trust Council “fosters a sustainable land conservation movement in the State of Rhode Island by supporting the missions and operations of land trusts and providing a forum for their effective cooperation.” The RILTC is a coalition of the state's land trusts. RILTC increases local land trusts' capacity, and also works on a statewide level to promote legislation and state policies aimed at supporting land trusts and land conservation including building public and legislative support for the state's Open Space Bond referenda. In addition, RILTC has held forums and workshops and produced reports, handbooks and videos to educate land trust and municipal leaders about the importance of protecting farmland including information on “how to” protect farmland and to lease farmland they own. RILTC has also collaborated with several land trusts to increase agricultural use of properties they own.¹⁰⁰

⁹³ *Id.* at 1.

⁹⁴ *Id.*

⁹⁵ RHODE ISLAND FARM BUREAU, <http://rifb.org> (last visited Nov. 27, 2013).

⁹⁶ *Id.*

⁹⁷ See FIVE-YEAR STRATEGIC PLAN, *supra* note 9, at 3.

⁹⁸ *Rhode Island Housing Land Bank Program*, <http://www.rhodeislandhousing.org/filelibrary/Land%20Bank%20Guides.pdf> (last visited Feb. 3, 2014).

⁹⁹ For example, the Martha's Vineyard Land Bank in Massachusetts purchases farmland for permanent preservation. See *eg. Land Bank Permanently Protects Nearly 40 Acres at Flat Point Farm*, VINEYARD GAZETTE, available at <http://mvgazette.com/news/2013/09/23/land-bank-permanently-protects-nearly-40-acres-flat-point-farm?k=vg52f0738bbd4bd> (last visited Feb. 12, 2014).

¹⁰⁰ FARM VIABILITY, *supra* note 68, at 2.

- **Young Farmer Network (YFN)** –The Younger Farmer Network runs Young Farmer Nights, a series of free, regular social and educational events meant to foster a farming community in Southeastern New England.¹⁰¹ These events occur every few weeks, rotating among farms, and are open to farmers and interested allies of all ages and experience levels.¹⁰² Each night includes a farm tour, a potluck dinner and a fun activity.¹⁰³

Because there are so many parties involved in Rhode Island farmland preservation, any legislative solution proposed by RIFPC must take note of the existing actors, and work to coordinate between these efforts.

While Rhode Island has a variety of farmland preservation strategies in place, the state has no centralized method of linking new farmers with current farmland-owners and underutilized public land. A number of states and private organizations (including Land for Good) have recognized that land-linking is an effective way both to increase farmland preservation and to promote land access, and in particular land access for new and expanding farmers. To get a better picture of the current landscape of land-linking programs across the country, Section III and IV will analyze other states' and municipalities' efforts to create and implement both private and public land-linking programs.

III. PRIVATE LAND-LINKING PROGRAMS

Private land-linking programs connect private landholders with farmland-seekers. Most private land-linking programs provide two main services: they post listings of real estate opportunities for sale and lease, providing information to farmland-seekers about land, and they provide educational materials. The most comprehensive programs provide additional services, such as succession planning and individual consultations. Some “private” land-linking programs are also open to public entities seeking to keep their land in agricultural production or sell unused land for agricultural production; indeed combining private and public land-linking efforts creates an integrated program that can increase land access for new and expanding farmers.

This section will describe how private land-linking programs are structured and operate; explain their core purposes of aggregating real estate opportunities and providing educational materials, as well as additional services they provide; and conclude by detailing the benefits and challenges of these programs.

A. The Structure of Private Land-Linking Programs

Private land-linking programs vary in relation to how they link farms and private farmland-owners as well as in their level of involvement with the matchmaking process.¹⁰⁴ Private land-linking programs always include some website component, which includes the farmland listing and typically background information. The websites generally have two main sections: the first section includes postings of available farmland for farmland-seekers, and the second provides more general resources on topics such as how to find land, create leases or tenure agreements, and begin operating a farm business. The websites also vary in whether they are open to the public or limit access. For example, Maine FarmLink

¹⁰¹ *Young Farmer Nights*, YOUNG FARMER NETWORK, <http://youngfarmernetwork.org/young-farmer-nights/> (last visited Jan. 13, 2014).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *New Farmer Landlink Programs*, PARTNERSHIP FOR AMERICA'S NEW FARMERS, <http://americasnewfarmers.org/access-to-land/new-farmer-landlink-programs/> (last visited Dec. 14, 2013).

requires that farmers have three years of agriculture experience to access their listings.¹⁰⁵ Most of the time access to the listings is free, but some programs require that users pay a fee, like Pennsylvania FarmLink, which requires a \$75 fee for access to the database either to list or to view.¹⁰⁶

For the most part, private land-linking programs are run by non-profit organizations. The Midwest Organic and Sustainable Education Service, a non-profit in Wisconsin, provides a land-linking service on its website, in addition to trainings and conferences aimed at promoting organic and sustainable farming practices.¹⁰⁷ Maine Farmland Trust operates Maine FarmLink, a website that includes databases of farmland-owners and farmland-seekers, as well as resources to assist with land transfer.¹⁰⁸

By contrast, other private land-linking programs are operated by state agencies. In the northeast, Connecticut and New Jersey both have private land-linking programs run by their Departments of Agriculture. In Connecticut, the program was created via legislation.¹⁰⁹ The statute gives authority to the Connecticut Department of Agriculture to establish a “database of farmers and agricultural land owners who intend to sell their farm operations or agricultural land” and briefly describes the linking mechanism.¹¹⁰ The legislation also requires that the department post educational materials on the program’s website.¹¹¹ The limited legislative direction suggests that the Connecticut Department of Agriculture has broad discretion in creating and implementing the land-link program. The Connecticut program connects farmland-seekers with farmland-owners with agricultural land for rent and sale and also disseminates information on leasing and farm transfer.¹¹² The New Jersey Farm Link program, while not legislatively-created, operates similarly to Connecticut’s program.

B. Services Provided by Private Land-Linking Programs

A number of functions fall under the general heading of “land-linking,” and it can be helpful to distinguish the various types and functions of land-linking programs. Land-linking programs can provide three different types of land access services: listing, linking, and matching. They can also provide other, additional “wraparound” services for seekers and landowners.¹¹³ Listing is simply the presentation of available farm properties, without any other functions, and New England Farmland Finder is an example of a listing platform. Linking involves some sort of application, screening and exchange of names, and lastly, matching is more hands-on, typically involving a staff person introducing two parties, and helping them with a transaction. Other services include educating seekers and landowners, referral to appropriate advisors, planning, document preparation, and negotiation assistance, for example.¹¹⁴ As shown in the following descriptions, “land-linking” programs vary greatly in their approach and services.

1. Listing of Real Estate Opportunities

As described above, private land-linking programs always include farmland listings on their websites, to provide information to farmland-seekers. Some sites are little more than online posting databases, serving just the “listing” function; however other programs have more extensive applications and intake

¹⁰⁵ *Prospective Farmers*, MAINE FARMLINK, <http://www.maineфарmlink.org/prospective-farmers> (last visited Dec. 13, 2013).

¹⁰⁶ *Help for New Farmers*, PA FARMLINK, http://www.pafarmlink.org/help_new_farmers.html (last visited Dec. 13, 2013).

¹⁰⁷ *Land Link-Up*, MIDWEST ORGANIC AND SUSTAINABLE EDUCATION SERVICES, <http://mosesorganic.org/farming/land-link-up/> (last visited Dec. 14, 2013).

¹⁰⁸ MAINE FARMLINK, <http://www.maineфарmlink.org> (last visited Dec. 14, 2013).

¹⁰⁹ CONN. GEN. STAT. ANN. § 22-26I (West 2013).

¹¹⁰ *Id.*

¹¹¹ CONN. GEN. STAT. ANN. § 22-26I (West 2013).

¹¹² CONNECTICUT FARM LINK, <http://www.farmlink.uconn.edu> (last visited Jan. 7, 2014).

¹¹³ Telephone Interview with Kathy Ruhf, Co-Director, Land for Good (Jan. 21, 2014) [hereinafter Telephone Interview with Kathy Ruhf, January].

¹¹⁴ *Id.*

procedures, providing more “linking” assistance. Aside from the rigorousness of the intake procedure, the listing and searching mechanisms are for the most part very similar from state to state. New Jersey offers a good model to illustrate these services.¹¹⁵

In New Jersey, the applicant must first complete and return a farmland-owner or farmland-seeker form, which requests general personal information as well as a description of the site to be listed (for farmland-owners)¹¹⁶ or a description of relevant farming experience and plan for the farm (for farmland-seekers).¹¹⁷ The farming opportunity is then added to the website, where it is viewable and searchable by participants and members of the public. If someone views the listing and wants more information (for example, contact information or background details), she can request a copy of that farmland-owner’s form by contacting the Farm Link program. For each request made, the program exchanges the farmland-owner’s and farmland-seeker’s forms, allowing each party to decide whether he or she wants to contact the other to determine whether a match is possible.¹¹⁸ Once the parties make contact, the land-linking program has no further role.

Other matching processes may have slight variations. For example, Maine FarmLink requires that farmland-seekers interested in a posting for farmland discuss it with FarmLink staff before making contact with the farmland-owner. The FarmLink staff serve as intermediaries (as opposed to the New Jersey program where information is exchanged automatically), and the program will put the two parties in touch only if the farmland-owner is interested in the profile of the farmland-seeker.¹¹⁹

2. Additional Wraparound Offerings

Because private land-linking programs are run by a wide variety of entities, their scopes, budgets and services differ substantially. Many programs, including Connecticut and New Jersey’s programs, focus on the basic mission of providing farmland listings and education materials.¹²⁰ Some farm-linking programs provide more than simply linking or matching assistance, because far more is required to get new and expanding farmers on the land and farming productively. Other private land-linking programs with more resources have created broader, more comprehensive programs, and provide extensive assistance, including farm succession planning, training on farming and business practices and consulting. Land for Good (as described in the previous section) and California FarmLink are good examples of programs that provide additional, more comprehensive services, including assisting with farm transfer, providing loans, and offering trainings.

a. Farm Transfer & Succession: California FarmLink, a non-profit organization, helps farmers face succession challenges by helping families clarify their goals and facilitating family discussion about the future of the farm business.¹²¹ Similarly, Land For Good advises and coaches clients through the farm transfer planning process via facilitation and technical assistance.¹²²

¹¹⁵ *How the Linking Process Works*, NEW JERSEY STATE AGRICULTURE DEVELOPMENT COMMITTEE, <http://www.nj.gov/agriculture/sadc/farmlink/howitworks.html> (last visited Dec. 14, 2013).

¹¹⁶ NEW JERSEY FARM LINK PROGRAM, FARM OWNER QUESTIONNAIRE, *available at* <http://www.nj.gov/agriculture/sadc/farmlink/farmownerform.pdf>.

¹¹⁷ NEW JERSEY FARM LINK PROGRAM, FARM SEEKER QUESTIONNAIRE, *available at* <http://www.nj.gov/agriculture/sadc/farmlink/farmseekerform.pdf>.

¹¹⁸ *Linking Process*, *supra* note 115.

¹¹⁹ *Prospective Farmers*, MAINE FARMLINK, <http://www.mainefarmlink.org/prospective-farmers> (last visited Dec. 14, 2013).

¹²⁰ These two state-run organizations are two of the sparsest in the northeast region. Perhaps, it is because they are running on public money, and therefore there are highly resource-constrained and unable to offer additional services. *Farm Link*, NEW JERSEY STATE AGRICULTURE DEVELOPMENT COMMITTEE, <http://www.nj.gov/agriculture/sadc/farmlink/> (last visited Dec. 14, 2013); CONNECTICUT FARMLINK, <http://www.farmlink.uconn.edu/> (last visited Dec. 14, 2013).

¹²¹ *Succession Planning*, CALIFORNIA FARMLINK, <http://www.californiafarmlink.org/succession-planning> (last visited Jan. 21, 2014).

¹²² *Farm Legacy*, LAND FOR GOOD, <http://landforgood.org/programs/farm-legacy/> (last visited Jan. 21, 2014).

b. Providing Loans: California FarmLink also provides flexibly-structured financing to low-income, immigrant, and beginning farmers through the Farm Opportunities Loan Program.¹²³ This program is specifically dedicated to farmers who cannot secure capital through conventional bank loans because they lack experience or language skills, have poor credit, or are pursuing non-traditional business models.¹²⁴ By having more flexible credit criteria, California FarmLink can often lend to these underserved farmers. If farmers are ineligible for this loan program, California FarmLink connects them to other financing sources including public loans or alternative financing solutions.¹²⁵ Such a lending program is expensive, but it can be exceptionally helpful for beginning and underserved farmers.

c. Workshops, Educational Materials and Consulting: Aside from connecting farmland-seekers and farmland-owners, land-linking programs' websites often also include a wide variety of resources on farming and farm succession. For example, farmland-seekers can find material on strategies to find land, get financing, and start a farm business, as well as links to non-profit organizations and public agencies that can provide them with technical assistance.¹²⁶ Farmland-owners can find resources about tenure agreements, how to manage farm transfer, and succession and retirement planning.¹²⁷ Some organizations, including Land For Good, also provide workshops, trainings and public meetings where farmers can learn about land access and meet other farmers going through the same process.

C. Conclusion: Benefits & Challenges of Private Land-Linking Programs

Private land-linking programs offer a simple and efficient way to help farmers find farmland. The basic operation of private land-linking programs—establishing websites for farmland listings and gathering resources for farm businesses—makes them relatively simple to implement and operate. The classified listings and resource pages are clear for farmers to understand, and may be easy for organizations to set up and maintain. Offering additional services like providing loans and consulting is more cost-intensive and requires staff and other resources, but these additional services can greatly enhance the effectiveness of a land-linking program (as noted in the Recommendations below).

The internet-based structure enables farmers to access this resource and makes it easier to maintain an up-to-date database. Internet hosting also maintains lower operating costs compared to other forms of service delivery, such as in-person or telephone appointments. Unfortunately, though, not all farmers use the Internet. Rural areas typically have less consistent (or non-existent) Internet coverage, and given their age and profession, older farmers are particularly unlikely to be comfortable using the Internet. Internet-based land-linking programs thus may miss out on this important demographic, whose members are likely to be interested in transferring their land to younger farmers. Therefore, it may be useful to include a less technological outreach component in the program such as a telephone hotline.

Lastly, because they exist solely online, land-linking programs may lack visibility within the farming community. To increase visibility, these programs should implement outreach campaigns, such as: (1) mailing information to farmers in the state, (2) publishing advertisements in farmers' journals, or (3) renting booths at state agricultural fairs.

¹²³ *About Us*, CALIFORNIA FARMLINK, <http://www.californiafarmlink.org/about-us> (last visited Dec. 14, 2013).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *See e.g., Getting Started in Connecticut*, CONNECTICUT FARMLINK, <http://www.farmlink.uconn.edu/pages/newfarmers.html> (last visited Dec. 14, 2013).

¹²⁷ *See e.g., Farm Estate Planning*, CONNECTICUT FARMLINK, <http://www.farmlink.uconn.edu/pages/estateplanning.html> (last visited Dec. 14, 2013).

A major complaint regarding listing and land-linking programs is the relatively small size of property databases, compared with the large list of seekers. Listing and linking programs cannot singlehandedly alleviate land access problems, nor can they ensure farmland preservation on their own. In order to broaden the properties listed and provide more opportunities for beginning farmers, land-linking organizations have the challenge of reaching out to non-farming landowners who hold property that is appropriate for farming to inform them about the opportunity to lease or sell their land.¹²⁸

IV. PUBLIC LAND-LINKING PROGRAMS

Public land-linking is a policy initiative whereby government entities—at either the federal, state, or municipal level—provide public land to private parties. Generally, land-linking provides surplus government land for private parties to lease and occasionally purchase, oftentimes with a goal of promoting a certain type of land use (e.g. agriculture) or reducing blight associated with underutilized public land. Such programs can be established via state legislation or municipal ordinance; they can also be created by federal, state and local governments without supporting legislation. Lastly, public land-linking can be promoted and facilitated by private parties. Aside from implementing land-linking programs, state and municipal governments can also help connect private users with public lands via land inventories, and land banks to help connect private users with public land.

Efforts to link private farmers with public land are not new. Ever since 1862, when the first Homestead Act was passed, federal, state and local governments have enacted numerous policies designed to populate unused government land with new farmers and agricultural uses.¹²⁹ These efforts are particularly meaningful because governments, on all levels, own significant land. In the United States, public agencies own almost forty percent of the land area.¹³⁰ In Rhode Island, the amount of state-owned public land is smaller but still substantial: 61,000 acres, or ten percent of all land in the state.¹³¹ Additionally, almost all tidal coastland in Rhode Island—384 miles in total—is publicly owned.¹³² Traditionally, some of these publicly-owned lands have been leased to private commercial entities, including ranchers, miners, and farmers. This public land has also typically been more difficult for private parties to acquire, because it sits beneath layers of regulation and bureaucracy that must be navigated before any deal can be reached.¹³³

A. Structure of Public Land-Linking Programs

1. Programs Created by Legislation

Legislation can help create and support land-linking programs, either by setting up the structure of the program or by providing funding. Very few states have enacted legislation to support public land-linking

¹²⁸ Telephone Interview with Kathy Ruhf, January, *supra* note 113.

¹²⁹ *Teaching With Documents: The Homestead Act of 1862*, UNITED STATES NATIONAL ARCHIVES, <http://www.archives.gov/education/lessons/homestead-act/index.html> (last visited Jan. 24, 2014).

¹³⁰ KATE DEAN, WASHINGTON FARMLINK, *FARMLAND CHANGING HANDS: A STUDY OF INNOVATIVE LAND TRANSFER STRATEGIES 18 (2011)*, available at http://www.cascadeharvest.org/files/u1/Farmland_Changing_Hands_0.pdf.

¹³¹ Tony Hansen, *Public Land: Hunting and Fishing in Rhode Island*, OUTDOOR LIFE, February 16, 2013, <http://www.outdoorlife.com/blogs/open-country/2013/02/public-land-hunting-and-fishing-rhode-island>.

¹³² *Rhode Island Analysis*, MARINE CONSERVATION AGREEMENTS: A PRACTITIONER'S TOOLKIT http://www.mcatoolkit.org/Country_Analyses/United_States/Rhode_Island.html (last visited Dec. 15, 2013).

¹³³ According to one study, these layers of obstruction include: (1) political vetting whereby a proposed lease is examined for its public benefits; (2) heightened accountability requirements, such as studies or reports that expressly detail a parcel's proposed use; (3) slow-moving communication and implementation processes, thanks to the involvement of various public bureaucracies; and (4) disputes and potential conflicts stemming from a disagreement over whether farming is the best use for the land in question. DEAN, *supra* note 130, at 18 (2011).

programs, and even fewer have legislation that specifically addresses linking public land with farmers. However, a few state legislatures have created programs that serve as instructive models of land-linking programs. As noted in Section III, legislation in Connecticut created the Connecticut FarmLink Program. The enabling legislation requires the Department of Agriculture to “establish a database of farmers and agricultural land owners who intend to sell their farm operations or agricultural land,” and the Agency must make “reasonable efforts to facilitate contact between parties with similar interests.”¹³⁴ While the Connecticut program is aimed at private farmland-owners, public entities may also participate in their program, and this legislative language could serve as a model for public land-linking programs.

The strongest public land-linking legislative program—and the most recent—is the one implemented in Iowa in 2013, which requires state government to give express priority to new farmers when leasing out public lands. Iowa’s statute established a program, managed by the Department of Natural Resources (DNR), which offers beginning farmers the ability to lease agricultural land controlled by the DNR.¹³⁵ The Iowa program operates by classifying available land that would be “moderate” or “good” for farming.¹³⁶ It then posts available lands online, along with the rental terms and a description of the plot.¹³⁷ Most leases are for a three-year term and require ten or twenty percent of payment at signing.¹³⁸

To qualify for the program, a farmer must be an Iowa resident, classified as a beginning farmer with the appropriate skills, and have a net worth less than \$691,000.¹³⁹ To qualify as a beginning farmer, a lessee must be an “individual, partnership, family farm corporation, or family farm limited liability company with a low to moderate net worth that engages in or wishes to engage in farming.”¹⁴⁰ To qualify as appropriately skilled, a farmer must receive certification through the Iowa Agricultural Development Division (IADD).¹⁴¹ The IADD operates as part of a larger scheme designed to assist young and fledgling farmers. This scheme includes the Beginning Farmer Loan Program (BFLP) and the Beginning Farmer Tax Credit Program (BFTC), both of which aim to provide financial support for purchasing land, buying machinery, livestock, and other equipment, and securing agricultural employment opportunities.¹⁴²

2. Governmental Programmatic and Policy Approaches

While a handful of states have created public land-linking programs via legislation, other policymakers have implemented land-linking programs without enabling legislation. Indeed, federal, state and local governments across the country have promoted land-linking via policies and programs without any explicit legislative mandate or underlying statutory infrastructure.

a. Federal Programs: While land use is typically dealt with on a state or local level, the federal government is a major landholder, and federal agencies have created land-linking programs to help connect farmers with underutilized federal land. For example, in Ohio, the National Park Service leases out historical farmland, including houses and related buildings, in Cuyahoga

¹³⁴ CONN. GEN. STAT. ANN. § 22-26ℓ (West 2013).

¹³⁵ IOWA DEPARTMENT OF NATURAL RESOURCES, LEASE TO BEGINNING FARMERS, *available at* http://www.iowadnr.gov/Portals/idnr/uploads/realty/bf_information.pdf.

¹³⁶ *Id.*

¹³⁷ *See* IOWA DEPARTMENT OF NATURAL RESOURCES, HABITAT MANAGEMENT LEASES AVAILABLE FOR THE LEASE TO BEGINNING FARMERS PROGRAM, *available at* http://www.iowadnr.gov/Portals/idnr/uploads/realty/bf_leases.pdf.

¹³⁸ *Id.*

¹³⁹ *Iowa enacts changes to leasing program for farmers*, THE ASSOCIATED PRESS, October 25, 2013, *available at* <http://www.newsdaily.com/article/326b9e6363e94d591fa35a60ce133705/iowa-enacts-changes-to-leasing-program-for-farmers>.

¹⁴⁰ LEASE TO BEGINNING FARMERS, *supra* note 135.

¹⁴¹ *Id.*

¹⁴² *See Iowa Beginning Farmer Tax Credits and Loan Programs*, IOWA STATE UNIVERSITY EXTENSION AND OUTREACH, <http://www.extension.iastate.edu/agdm/wholefarm/html/c4-30.html> (last visited Jan. 24, 2014).

National Park to farmers willing to restore the properties and use them for agricultural production.¹⁴³ Once the new farmer has been connected with the old and unused farmland, the National Park Service remains actively engaged in the farmer's efforts: the agency provides infrastructural support, assesses farming practices to ensure the farmer is using sustainable practices, and works to help the lessee succeed commercially, such as by hosting farmers markets nearby.¹⁴⁴ The program is also notable for the long duration of its leases: in most cases, they are granted for a period of sixty years.¹⁴⁵

b. State Programs: In some states, agencies lease lands to private parties who agree to use the land for purposes compatible with the mission of the agency. Although these purposes are usually limited in scope, requiring a potential farmer to offer or comply with specified practices, agency land-linking also carries some strong advantages: it is often efficiently run, requiring relatively few layers of government bureaucracy and oversight; and its overall purposes are clear, allowing compatible farmers the opportunity to enter into a mutually beneficial land arrangement. Two of the more robust state agency programs can be found in New Jersey and Illinois.

In New Jersey, the Department of Environmental Protection Division of Fish and Wildlife offers approximately 280 lease agreements for use by local governments, non-profit organizations, corporations, and private citizens.¹⁴⁶ The leases are administered by the Department of Environmental Protection's Natural and Historic Resources Group.¹⁴⁷ The Group works to identify appropriate land, update and price land information online, hold public bids, and provide rent oversight.¹⁴⁸ Farmland properties are a core component of the program,¹⁴⁹ and the leases guidelines contain few specifications, ensuring that farmers have the flexibility to innovate and experiment on their land.¹⁵⁰

In Illinois, the Department of Natural Resources has adopted a policy of leasing out land it owns or manages for agricultural use.¹⁵¹ Through the accompanying program, officially the Agricultural Land and Wildlife Habitat Management Program, the Department works to identify cropping plans and agricultural practices that are compatible with the agency's overall purpose: protecting wildlife and improving habitat diversity.¹⁵² Once identified, appropriate lands are leased out through a competitive bidding process. The farmer or entity that makes the winning bid can develop the land in accordance with its cropping plan, paying rent in the form of cash, crops, or services.¹⁵³

In Massachusetts, the Massachusetts Department of Agricultural Resources (MDAR) runs the State-Owned Farmland Licensing Program, which makes publicly-owned agricultural land

¹⁴³ DEAN, *supra* note 130, at 20.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Office of Leases*, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, http://www.state.nj.us/dep/parksandforests/parks/business_ops/leases.htm (last visited Jan. 24, 2014).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ See NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, *OPERATING AGREEMENT*, available at http://www.state.nj.us/dep/parksandforests/parks/business_ops/docs/sample_leases_agreement.pdf.

¹⁵¹ ILLINOIS DEPARTMENT OF NATURAL RESOURCES, *POLICY AND PROCEDURE MANUAL*, available at http://livewellcolorado.org/uploads/ckfinder/userfiles/files/6_April%281%29.pdf.

¹⁵² *Id.*

¹⁵³ *Id.*

available to farmers through agricultural licenses.¹⁵⁴ The Program's eight farmland properties are put out to bid through a Request for Response (RFR) process, and then MDAR negotiates a license agreement with the farmer outlining terms and conditions of use. The rental period is for five years with an option to renew for an additional five years.¹⁵⁵ Farmers are only allowed to build temporary structures, like fences, and the structures must be removed when the agreement ends.¹⁵⁶ Farmers also are not allowed to operate farm stands or retail establishments on the land.¹⁵⁷

c. Local Programs: Municipalities have also implemented public land-linking programs, and several municipalities in Colorado are at the forefront of these efforts. In Aurora, Colorado, the Aurora Parks, Recreation and Open Space Department donated land to DeLaney Community Farm, a community supported agriculture (CSA) project where members help to grow vegetables, herbs, and flowers and also enjoy the products produced on the parcel.¹⁵⁸ Instead of offering leases, the CSA operates by requiring annual membership dues from its members and other affiliated participants.¹⁵⁹

In Boulder, the Board of County Commissioners implemented the Boulder County Food and Agriculture Policy Council Strategic Plan. The plan defines sustainable agriculture practices for the Boulder County Parks and Open Space (BCPOS), which oversees 100,000 acres of unused open space—25,000 of which is dedicated to agriculture.¹⁶⁰ The BCPOS manages the open space by offering leases, tracking crop production, and working to improve the land's water supply.¹⁶¹ To qualify for a lease, new farmers must take the Colorado Building Farmers training program.¹⁶²

Other municipalities have followed Boulder's lead and implemented their own agriculture programs. Many programs take innovative approaches towards repurposing underutilized lands that traditionally were not reserved for agriculture. In Aurora, Illinois, for example, tillable land at the Aurora Municipal Airport is periodically leased to farmers for agricultural production.¹⁶³ A program in Pennsylvania takes an opposite approach: it seeks to revitalize traditional farmland that is no longer in active use. To accomplish this, Stroud Township, a township in Monroe County along the New Jersey border, works to purchase and protect threatened farmland for perpetuity.¹⁶⁴ The program's signature farm—Josie Porter Farm—was purchased from private owners using Open Space funds.¹⁶⁵ The farm is now run by farmers using traditional farming

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *State-Owned Farmland Licensing Program FAQ*, MASSACHUSETTS DEP'T OF AGRICULTURAL RESOURCES <http://www.mass.gov/eea/agencies/agr/land-use/state-owned-farmland-licensing-program-faq.html> (last visited Jan. 21, 2014).

¹⁵⁷ *Id.*

¹⁵⁸ *About DeLaney Community Farm*, DENVER URBAN GARDENS <http://dug.org/about-delaney/> (last visited Dec. 14, 2013).

¹⁵⁹ *Id.*

¹⁶⁰ *See Food & Agriculture Policy Council*, BOULDER COUNTY COLORADO, <http://www.bouldercounty.org/gov/boards/pages/fapc.aspx> (last visited Jan. 24, 2014).

¹⁶¹ *Food Production on Public Lands*, LIVEWELL COLORADO, http://livewellcolorado.org/healthy-policy/food-systems-toolbox/production#food_production (last visited Jan. 24, 2014).

¹⁶² *Id.*

¹⁶³ CITY OF AURORA, CITY OF AURORA INVITATION TO BID, *available at* http://livewellcolorado.org/uploads/ckfinder/userfiles/files/5_April.pdf.

¹⁶⁴ *PASA Field Day - Farming on Open Space Land: Using Sustainable Farming to Conserve Public Land & Advance Local Food Production*, PENNSYLVANIA ASSOCIATION FOR SUSTAINABLE AGRICULTURE, <https://www.pasafarming.org/events/pasa-events/pasa-field-day-farming-on-open-space-land-using-sustainable-farming-to-serve-public-land-advance-local-food-production> (last visited Jan. 24, 2014).

¹⁶⁵ *Id.*

methods, who also operate a farmers market, a buying club, and a CSA that distributes over 125 shares of produce to the local community with the goal of increasing food security.¹⁶⁶

3. Private Organization Approaches

In many places, private organizations have undertaken efforts to facilitate the public land-linking process, usually on a local level. In San Luis Obispo County, California, an organization called Central Coast Grown used Geographic Information Systems (GIS) technology and aerial satellite photographs to build a database of public land that has the proper characteristics to support agricultural production.¹⁶⁷ Once suitable land is identified, Central Coast Grown works with the municipality to find farmers to lease the land.¹⁶⁸ Similarly, in Massachusetts, the New Entry Sustainable Farming Project—supported by Tufts University—runs Community Farmland Connections.¹⁶⁹ Community Farmland Connections uses GIS to identify unused viable farmland and works with towns and their agricultural commissions to encourage landowners to lease their land to a farmer.¹⁷⁰ (Community Farmland Connection looks at both public and private land.) In North Carolina, public lands are matched with individual farmers through the work of private organizations, including the Carolina Farm Stewardship Association (CFSA), the North Carolina Farm Bureau, and Center for Environmental Farming Systems (CEFS).¹⁷¹

Private organizations have also played a key role in promoting farm incubator programs. Farm incubator programs take a more active approach to the problem of land access than land-linking programs, for example offering traditional agricultural training and technical assistance in addition to sometimes linking new farmers with land—usually public land—for agricultural development.¹⁷² Farm incubator programs can also offer assistance with acquiring farming tools. For example, Intervale Center in Burlington, Vermont has a farm incubator program that leases land, and also “equipment, greenhouses, irrigation, and storage facilities to “small independent farmers” directly.¹⁷³

Some incubator farms are run through the joint efforts of public entities and private groups. For example, the PLANT Farm Enterprise Incubator operates on lands owned by a public university, North Carolina State University, and receives support from Orange County, the local municipality.¹⁷⁴ PLANT Farm Enterprise leases land parcels of two to five acres to apprentice farmers for renewable three-year periods.¹⁷⁵

B. Other Strategies to Connect Public Land to Private Owners

Aside from traditional public land-linking programs, there are other strategies that can help connect public land to private farmers. Although these programs do not technically fall under the umbrella of land-linking, we chose to include these strategies for the sake of comprehensiveness, and also because

¹⁶⁶ *About Us*, JOSIE PORTER FARM, <http://www.josieporterfarm.com/?itemCategory=29751&siteid=203&priorId=0&pid=0> (last visited Dec. 17, 2013).

¹⁶⁷ *Public Land Survey*, CENTRAL COAST GROWN, <http://centralcoastgrown.org/projects/public-land-survey/> (last visited Jan. 24, 2014).

¹⁶⁸ *Id.*

¹⁶⁹ *Community Farmland Connections*, NEW ENTRY SUSTAINABLE FARMING PROJECT, <http://nesfp.org/farmland/community-farmland-connections> (last visited Jan 14, 2014).

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Incubator Farm Project: Resources for New Incubator Farms*, CENTER FOR ENVIRONMENTAL FARMING SYSTEMS, <http://www.cefs.ncsu.edu/whatwedo/foodsystems/incubatorfarmresources2a.html> (last visited Jan 14, 2014).

¹⁷³ *Farms Program*, INTERVALE FARM CENTER, <http://www.intervale.org/what-we-do/farms-program/>.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

these programs can help support land-linking programs. These strategies include: (1) land inventories, (2) land banks, and (3) public land trusts.

1. Land Inventory

To promote urban and rural agricultural uses by making more land available for farming, a number of state and localities have created land inventories, which catalog land and determine which parcels may be appropriate for agriculture. This is especially helpful if there is no consensus about how much public land is actually usable farmland in the jurisdiction. In some cases, a state statute or city ordinance mandates that a public entity create a land inventory. This statutory backing is helpful because creating a land inventory can be time-consuming and costly, and without statutory compulsion agencies may lack the political will necessary to tackle the task.

For example, in Florida, the Department of Environmental Protection is required by statute to produce an inventory of all publicly owned lands.¹⁷⁶ The Department contracts with the Public Lands Research Program to examine tax-roll databases and ownership data to compile the inventory, known as the Public Lands Inventory (PLI).¹⁷⁷ As a result of these efforts, private parties have a one-stop searchable database for locating parcels by agency or location.¹⁷⁸

On the municipal level, one of the most successful inventory efforts in the country is Portland, Oregon's "Diggable City" (DC) Project. The project was initiated by an ordinance, passed in 2004, which called for a citywide inventory of municipal land for the purpose of determining urban agriculture suitability.¹⁷⁹ After the ordinance's passage, the city worked with local graduate students to survey public lands using GIS technology. The survey involved examining property records and satellite maps to determine each parcel's agricultural suitability, based on factors such as tree cover and the presence of nearby buildings. Once compiled, the final inventory categorized each available parcel based on its recommended land use.¹⁸⁰ Various community stakeholders and agencies provided input throughout the process, thus ensuring a collaborative effort.¹⁸¹ Portland's DC Project has served as a model for other cities looking to promote urban agriculture on public lands, and cities such as Seattle, Oakland, Cincinnati and Baltimore have also created online databases of land that can be leased for urban farming and gardening.¹⁸²

2. Land Banking

Land banking is another mechanism for channeling public parcels toward private use, and it can help provide opportunities for aspiring farmers. A land bank, unlike a land trust, is operated by a quasi-governmental entity for the function of collecting property to remediate it, repurpose it, and find a private party willing to buy or lease the land.¹⁸³ While land banks sometimes need to purchase a given parcel, often they build their inventory by receiving title to foreclosed parcels that are not sold, or by

¹⁷⁶ *Public Lands Inventory*, FLORIDA PUBLIC LANDS RESEARCH PROGRAM, available at <http://www.floridapli.org/> (last visited Jan. 7, 2014).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Wendy Mendes, Kevin Balmer, Terra Kaethler, and Amanda Rhoads, *Using Land Inventories to Plan for Urban Agriculture: Experiences From Portland and Vancouver*, JOURNAL OF THE AMERICAN PLANNING ASSOCIATION 74, 74 (2008), available at <http://fyi.uwex.edu/aic/files/2010/04/mendes-2008-Using-Land-Inventories-to-Plan-for-Urban-Agriculture.docx.pdf>.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² See *Land Access*, URBANAGLAW, <http://www.urbanaglaw.org/land-access/> (last visited Jan. 24, 2014).

¹⁸³ BURLINGTON ASSOC. IN COMTY DEV., L.L.C., LAND BANKING VS. LAND TRUSTING A COMPARISON OF COMPLEMENTARY STRATEGIES, available at http://www.burlingtonassociates.com/files/8513/4463/0249/1-Land_Banking_vs._Land_Trusting.pdf.

amassing surplus public land.¹⁸⁴ In almost all cases, whether implemented at a state or local level, a land bank requires state-level enabling legislation.¹⁸⁵ This is especially the case for land banks today, which typically draw upon a broad range of funding sources and therefore require greater legal flexibility.¹⁸⁶ Although, as noted above, Rhode Island has over 45 land trusts, the state's only land bank is limited in scope to real estate development and affordable housing projects.¹⁸⁷

The first land banks were created in St. Louis and Cleveland, beginning in the 1970s.¹⁸⁸ These initial banks used state enabling legislation to empower local land banking authorities to manage surplus land to address pressing community issues.¹⁸⁹ The St. Louis and Cleveland Land Banks addressed economically blighted properties—for example properties that were abandoned and tax delinquent—using their limited resources and legal power to purchase and clear the parcels and transfer them to private productive use.¹⁹⁰

Recently, land banks have expanded in their power and focus, acquiring funding sources outside of traditional government channels, receiving the authority to concentrate efforts on larger numbers of parcels, and emphasizing alternative uses, such as agriculture.¹⁹¹ Some examples of these modern land banks include programs enabled by state legislation and initiated by state governments in Michigan,¹⁹² Ohio,¹⁹³ Pennsylvania,¹⁹⁴ and New York.¹⁹⁵

For example, in 2010, New York introduced land bank enabling legislation,¹⁹⁶ intended to build on the success of other programs while simultaneously simplifying the mechanisms by which land is acquired and managed.¹⁹⁷ The resulting law in New York created the New York State Land Bank Program, which provides an application process for municipalities that seek to start a land bank program.¹⁹⁸ The state works in conjunction with these municipalities to approve and monitor their programs. To receive approval, a proposal should document the extent of the locality's vacant, foreclosed, and tax-delinquent land; the intergovernmental cooperation planned between the municipality and other stakeholders; the policy priorities for use of acquired lands; and the proposed financial resources from which the bank expects to draw, along with several other factors.¹⁹⁹ Once the municipalities' land banks are approved, they can take control and redevelop vacant and abandoned properties.²⁰⁰ Land banks must submit annual reports to Empire State Development (ESD), a state agency.²⁰¹ While agriculture is not explicitly

¹⁸⁴ FRANK ALEXANDER, CENTER FOR COMMUNITY PROGRESS LAND BANKS AND LAND BANKING 30 (2011), available at http://www.smartgrowthamerica.org/documents/ccp_land_banks.pdf.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ RHODE ISLAND HOUSING, RHODE ISLAND HOUSING LAND BANK PROGRAM, available at <http://www.rhodeislandhousing.org/filelibrary/Land%20Bank%20Guides.pdf>.

¹⁸⁸ ALEXANDER, *supra* note 184, at 10 (2011).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Mich. Comp. Laws § 124.751 (2013).

¹⁹³ Ohio Revised Code § 5722.01(E) (2008).

¹⁹⁴ 68 Pa.C.S. § 2104.

¹⁹⁵ N.Y. U.C.C. Law § 1600.

¹⁹⁶ *Id.*

¹⁹⁷ ALEXANDER, *supra* note 184, at 22 (2011).

¹⁹⁸ See *New York State Land Bank Program*, EMPIRE STATE DEVELOPMENT, <http://esd.ny.gov/BusinessPrograms/NYSLBP.html> (last visited Jan. 24, 2014).

¹⁹⁹ See EMPIRE STATE DEVELOPMENT, LAND BANK APPROVAL GUIDELINES 3–4, available at http://esd.ny.gov/BusinessPrograms/Data/NYSLBP/112111_LandBankGuidelines.pdf.

²⁰⁰ *Id.* at 4.

²⁰¹ *Id.*

mentioned in the legislation, the inclusion of rural areas reflects the state’s willingness to use banked lands for farmland needs.²⁰²

Similarly, Ohio’s 2008 “second generation” land-banking law allows local land banks greater autonomy to manage and develop land in line with larger land-use policies.²⁰³ The local Cuyahoga Land Bank in Cleveland has bought and cleared vacant and foreclosed properties to use for food production. Based on these efforts, about 120 vacant lots have been converted into community gardens, orchards, and parks.²⁰⁴

While Rhode Island has no land bank along the lines discussed in this section, the programs implemented over the past decade provide valuable lessons. A strong land bank in Rhode Island would likely need to be created through legislation, empowering a strong authority that would engage in all steps of a project, make it easy for a municipality to express interest in starting a land bank, and engage local community members.

C. Conclusion: A Wealth of Opportunities

The significant diversity of public land-linking programs offers both challenges and opportunities for states that seek to connect private farmers with public lands. In terms of challenges, the diversity of programs suggests that there is no consensus regarding the best way to implement this policy. Fortunately, however, the diversity of programs also presents numerous informative case studies. Lawmakers can look to Iowa’s innovative and inventive legislation to help support land-linking to new and expanding farmers. If lawmakers want to incorporate other strategies they can consider Portland’s success building a land inventory, and New York or Ohio’s model land banking.

V. CHALLENGES TO PRIVATE AND PUBLIC LAND-LINKING IN RHODE ISLAND AND RECOMMENDATIONS

Rhode Island has unique characteristics and challenges when it comes to implementing a land-linking program. Section II of the report, which describes the current landscape of farmland preservation in Rhode Island, provides a sense of the current land access landscape that any legislative or policy program must take into account. Section III and IV detail other states’ private and public land-linking programs, providing information to help guide Rhode Island advocates and policymakers as they consider the best structure for establishing a land-linking program. This section briefly describes the challenges facing the implementation of a land-linking program in Rhode Island. It also begins to identify the policy and programmatic components of a land-linking program that will be essential in developing a comprehensive, effective Rhode Island program.

A. Challenges for Implementing Land-Linking in Rhode Island

1. The major impediment to creating a land-linking program in Rhode Island is ***lack of staffing and lack of funding.***

As it becomes more known and used, New England Farmland Finder can be a successful component of a more comprehensive set of land access and transfer services for Rhode Island. However, Rhode Island should provide more education and technical assistance to farmland seekers, farm families,

²⁰² *Id.*

²⁰³ OHIO REV. CODE ANN. § 1724.02 (West 2013).

²⁰⁴ *City Land Inventory Studies*, URBANAGLAW, http://www.urbanaglaw.org/land-access/#City_Land_Inventory_Studies (last visited Jan. 24, 2014).

and landowners. Currently, Land For Good offers these services in Rhode Island via a field agent who serves southern New England, but there is no dedicated field agent on the ground in Rhode Island.²⁰⁵ Land for Good is currently seeking funding to support a part-time field agent in Rhode Island.²⁰⁶ Any future land-linking program or policy in Rhode Island would benefit from at least one staff person dedicated to coordinating and implementing the program successfully. This will require appropriations by the state legislature or funding from another grant source.

2. Aside from funding and technical assistance limitations related to land-linking, restrictive easements may prevent the innovation required to keep farms economically viable.²⁰⁷

In general, overly detailed language in conservation easements, including restrictions on fencing,²⁰⁸ can prevent farmers from innovating and adopting best farming practices.²⁰⁹ Any land-linking program utilizing agricultural or open space easements must ensure that all parties, including municipalities, land trusts and private property owners, understand how to draft easement terms to support farmers. Currently, there is some debate regarding the typical ALPC easement language. While some groups, including RILTC, believe the language is too restrictive, RIDEM representatives feel that the easement is sufficiently permissive. Either way, the easement is made more burdensome when projects utilize federal funds, because the federal government puts additional restrictions in place.²¹⁰ Prior to creating a land-linking program, Rhode Island must work to study the issue, determine the root of the miscommunication, and change the easement language if necessary or else educate stakeholders regarding why the current easement is sufficiently permissive. In addition to standard easement language, it might also be necessary to amend existing easements on public land to reduce restrictive language and to ensure that agriculture is allowed on land trust land (currently, many conservation easements on land trust land do not allow for agricultural use). Amending easements is a lengthy and onerous process, and may be especially difficult and time-consuming for an all-volunteer run land trust.²¹¹ Any land-linking program, then, should have resource to support municipalities, land trusts and landholders' efforts to amend easements to support a broad range of agricultural uses where appropriate and consistent with the original purpose for protecting the property.

3. For a public land-linking program in Rhode Island, more needs to be done to determine how much state and municipal is available and appropriate to support such a program.

While RIDEM has inventoried its land and begun to lease some of its holdings to farmers, other state agencies have not analyzed their land holdings, and they may not have the capacity, funds or political will to do so in the near future,²¹² particularly because most state agencies (aside from RIDEM) have not yet incorporated GIS mapping.²¹³ Rupert Friday at the RILTC believes that because state agency budgets are so tight, some state agencies have sold some of their land holdings to support their operating expenses.²¹⁴ It is unclear whether municipalities have land that could be

²⁰⁵ Telephone Interview with Kathy Ruhf, January, *supra* note 113.

²⁰⁶ *Id.*

²⁰⁷ FARMRI 2.0: INITIATIVES, *supra* note 4, at 7.

²⁰⁸ Telephone Interview with Rupert Friday, Director, RILTC (Dec. 6, 2013).

²⁰⁹ RHODE ISLAND LAND TRUST COUNCIL, FARMRI 2.0: CRAFTING THE NEW GENERATION OF INITIATIVES FOR SAVING RHODE ISLAND'S WORKING FARMS 32 (2010), available at http://www.rilandtrusts.org/documents/FarmRI_2.0_Final.pdf.

²¹⁰ Telephone Interview with Michelle Sheehan, Assistant to State Land Conservation Program, RIDEM (Jan. 17, 2014)

[hereinafter Telephone Interview with Michelle Sheehan, January].

²¹¹ Telephone Interview with Michelle Sheehan, November, *supra* note 63.

²¹² *Id.*

²¹³ Telephone Interview with Michelle Sheehan, January, *supra* note 210.

²¹⁴ Telephone Interview with Rupert Friday, *supra* note 208.

farmed – of the thirty-nine municipalities, twenty-one do not have land trusts. Moreover, even land that was once farmable will become shrub, brush and trees within several years if not maintained in agriculture.²¹⁵ This out-of-production farmland becomes early succession forest and must be cleared before it can go back into agricultural production.²¹⁶ Municipalities and the state would need to clear the land and get it back into agriculture condition, which would be a significant financial burden.²¹⁷

4. Aside from the possible small inventory of appropriate farmland, land trusts and state agencies may be reluctant to lease their lands out for agricultural use because such uses are seen to be **at odds with the agencies' stated goals.**

For example, some land trusts seek only to conserve wildlife habitat and preserve open spaces, and agricultural uses may not seem compatible with this mission. Similarly, RIDEM has leased out some land to farmers allowing them to grow only low-impact crops, such as hay and corn, because then the fields can also serve as wildlife habitat.²¹⁸ Some people believe that a public land-linking program likely needs an outreach and education component to convince municipalities, land trusts and state agencies that agriculture can serve conservation and habitat preservation goals. RILTC has already begun this work, creating a handbook on agricultural leasing and performing outreach to land trusts.²¹⁹ Nevertheless, it would be helpful to have stakeholders come together once again and discuss opportunities for farming on state, municipal and land trust land. In order to foster success, a land-linking or land access program must help facilitate relationships between farmers and land trust, municipal and state landholders. As an RILTC report explains, farmers need someone at the land trust or other conservation agency that “is a good liaison, communicates well, understands agriculture and can work with the farmer to maintain the economic viability of the farm.”²²⁰

5. Lastly, to be successful, a land-linking program that involves leasing state or municipal land must **increase the maximum lease length for this land** and ensure farmers are able to invest in capital improvements.

To improve land access and security for farmers, a land linking program should seek changes in public policy to allow longer lease terms on public land. Currently leases on state and municipal land can only run for a maximum of five years.²²¹ However, five years may not be a sufficient length of time to entice farmers to invest in and cultivate the leased land. As explained by the RILTC, “farmers leasing land will only invest in improvements like soil productivity if leases are long enough for them to get a return on their investment.”²²² The shorter the length of the lease, farmers will be less likely to be able to get capital for projects on leased land, and they may not be incentivized to make improvements because the land will revert to the landowner.

B. Key Components for Rhode Island Land-Linking Program

The broad diversity of private and public land-linking programs across the country offers valuable lessons on the components of a successful program. While we plan on developing more specific legislative recommendations throughout the spring of 2014, we identify in this memo some components

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ Telephone Interview with Michelle Sheehan, November, *supra* note 63.

²¹⁹ FARM VIABILITY, *supra* note 68, at 2.

²²⁰ FARMRI 2.0: INITIATIVES, *supra* note 4, at 32.

²²¹ FIVE-YEAR STRATEGIC PLAN, *supra* note 9, at 21.

²²² FARMRI 2.0: INITIATIVES, *supra* note 4, at 21.

that our initial research indicates are essential for a successful land-linking program. These components are based on the various programs outlined in this memo, and also take into account the specific characteristics of Rhode Island.

- 1. Conduct an inventory of state, municipal and land trust lands, including urban lands, appropriate for farming.** Aside from RIDEM's inventory and the inventory of land trust land done by RILTC, Rhode Island public entities and land trusts have not identified their land holdings that might be appropriate for farming. State agencies, municipalities and land trusts should conduct robust land inventories, focusing on identifying land that would be appropriate for farming (including land that may require clearing). This public inventory should be uploaded into a publicly-run database (as in Baltimore's database of vacant land or Florida's state-level database described in Section IV(B)(1): Land Inventory). The state could partner with local universities to help provide GIS support, as in Portland's Diggable City project. This inventory could be created with or without the legislature's involvement. Rhode Island could also consider emulating New Entry Sustainable Farming Project's Community Farmland Connections (described in Section IV(A)(3): Private Organization Approaches), which maps viable farmland in municipalities and then works with the towns and agricultural commissions to do outreach to private landowners and encourage them to lease their land to a farmer.
- 2. Research demand for farmland in Rhode Island.** Analytics of New England Farmland Finder show that there are many farmland seekers in the Providence and Rhode Island area and the popular Young Farmers Nights show that younger Rhode Islanders are interested in farming. However, there is little data available about the demographics of who is seeking farmland in Rhode Island. Are they current farmers looking to expand? Apprentices looking to start their own farm? Gaining a better understanding of who the land-linking program will serve will help Rhode Island better design and tailor the program to fit farmers' needs.
- 3. Create a program that goes beyond real-estate matching and educational resources.** As discussed in Section III, the most robust land-linking programs are those that provide support and training beyond making matches and providing links to educational resources. To be most effective, RI's land-linking program could be modeled after California FarmLink and provide succession planning, individual consultations and even lending programs to help facilitate farmland transfer on both private and public land. To expand the number of young, beginning farmers in the state, Rhode Island can also follow Iowa's model and provide priority for farmers that qualify as beginning farmers. These farmers should also be given extra training and support.
- 4. Ensure sufficient staff to administer the program.** Though it is not clear exactly what design the program should take, the program should work with existing players to coordinate efforts and take advantage of existing infrastructure. To be effective, the program may need to address existing personnel gaps. If the program hires staff, it should ensure that the staff have knowledge of local farming practices and the local farming community. This person or persons could be located in a variety of different organizations and agencies, and would help publicize the program, perform outreach, make matches and provide technical assistance.
- 5. Ensure land-linking database is accessible and open to all.** For both private and public land, Rhode Island should ensure that whatever program is implemented is highly visible and accessible (even to older farmers that may lack internet connection). To that end, Rhode Island should create a land-linking program that has limited barriers: it should not require minimum

farming experience or a fee to access the site's listings. Because excessive calls to landowners may be a nuisance, Rhode Island may want to consider establishing a middleman or screening process to reduce the burden on farmland owners.²²³

- 6. *Increase length of lease time.*** As noted above, Rhode Island public land is currently limited to a lease length of five years, which in some cases may not be sufficient for farmers to recoup capital investments they would like to make. Therefore, the Rhode Island legislature should enable agencies to increase the lease lengths on public lands. Rhode Island could increase the lease length from five years to ten years, as suggested by the Rhode Island Farm Bureau, or they could consider a more flexible approach. For example, Minneapolis' program offers leases of various lengths depending on the farmer's level of experience, and Portland's urban agriculture programs offers leases of up to ninety-nine years on a case-by-case basis. Leases with rolling terms, or provisions for favorable extension might also address this problem.
- 7. *Determine whether the standard conservation easement language sufficiently supports farming and conduct outreach to land trusts and state agencies to educate them on the benefits of farming and assist them in re-drafting their easements.*** As noted above, standard conservation easements may be too restrictive and may limit farmland's potential. As part of the implementation of any land-linking program, RIDEM should work with Land for Good, the RI Farm Bureau, RILTC and other stakeholders to clarify whether the current easements are appropriately broad, and to determine what, if any, changes would be helpful to support farmers, and to work with other New England states to try and revise NRCS' standard easement language. Any change to easement language should also ensure land remains in agricultural production. Additionally, land trusts and state agencies may be reluctant to lease their lands out for agricultural use because they believe it is at odds with their stated mission or purpose. Even if they are amenable to allowing agriculture on their land, their easements may not allow it or may be too restrictive to allow farmers to practice economically viable agriculture. Any program Rhode Island creates and implements must address this crucial issue and provide outreach and assistance to land trusts to help them support agriculture on their lands.

The State of Rhode Island has a tremendous opportunity to match farmland-seekers with public and private land that is not currently in productive use, as well as land from retiring farmers. A land-linking program also has the potential to preserve farmland and natural habitats that would otherwise be lost to development. Further, a land-linking program would increase the amount of locally-grown food available for sale in the state. Thus a well-designed land-linking program has the potential to address significant problems and lead to a more vibrant Rhode Island food system.

²²³ Telephone Interview with Rupert Friday, *supra* note 208.

APPENDIX A: Farmland Access and Transfer: A Working Schematic about Services

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This table identifies the key components of farmland access and transfer as identified by Land For Good. As Rhode Island considers how to design its own program, this table could be helpful in organizing ideas and potential components of the program.

LISTING: *a managed list of available farm properties; may also list seekers.*

- May include:
 - Landowner application
 - Seeker application
 - Online/other posting
 - Notification process
 - Updating process
 - Outreach/promotion
- Is list ONLY; probably web-based
- Can maintain confidentiality. Think Craig's List or FSBO
- What's involved? Tasks/functions
- How is this done? What is the process?
- What works and what doesn't for the seeker or owner/?
- Gap(s) and needs addressed? Fit with other programs and services?

LINKING: *a service providing contact information to seekers/owners, typically pre-sorted or screened.*

- May include:
 - Providing selected contact/other info
 - Screening and categorizing/coding owner and seeker applicants
 - Supporting information
 - Site visits
- Referral for TA What's involved? Tasks/functions
- How is this done? What is the process?
- What works and what doesn't for the seeker or owner/?
- Gap(s) and needs addressed? Fit with other programs and services?

MATCHING: *a service that facilitates a specific transaction between a seeker and an owner.*

- May include:
 - Purchase/sale transaction support
 - Lease drafting/negotiation
 - Management agreement
 - Facilitated meetings
 - Advisor team bldg. (legal, other)
 - Specific TA/referral
 - Site visits
 - Farmer recruitment
- What's involved? Tasks/functions
- How is this done? What is the process?
- What works and what doesn't for the seeker or owner/?
- Gap(s) and needs addressed? Fit with

- **SUPPORTING SERVICES:** *general services that build seeker and/or owner competencies to engage in farm acquisition or transfer:*

- Business/financial/acquisition planning
- Land use planning, farm design
- Estate/succession/transfer planning
- Tenure option information
- Lease education
- Land protection/easements
- Landowner education, information
- Other

- **ANCILLARY SERVICES:** *may be provided by program or organization but not directly related to farm acquisition or transfer:*

- General business/viability planning
- Marketing
- Employment and labor
- Production systems/practices
- Non-farm estate planning
- Financial management
- Land use planning/conservation