



A Working Guide to Current Use Taxation for Agricultural Lands

Jess Phelps

November 2021



Contents

AUTHORS	3
INTRODUCTION	4
I. WHAT ARE CURRENT USE PROGRAMS	5
II. THE ORIGINS OF CURRENT USE—ADDRESSING LAND USE CONVERSION	6
III. UNDERSTANDING THE POLICY RATIONALES FOR CURRENT USE PROGRAMS	7
A. Reducing Conversion Pressure	7
B. Protecting Farmland	7
C. Providing General Tax Benefits to Farmers.	8
D. Aligning Property Taxes with Use of Community Services	8
IV. HOW DO THEY WORK?	9
V. COMMON ATTRIBUTES OF CURRENT USE PROGRAMS	10
A. Eligibility Requirements	10
B. The Scope of the Benefit	11
C. Length of Enrollment and Transfer of Enrollment	12
D. Exiting from the Program	12
E. Other Requirements.	13
VI. VERMONT AS A CASE STUDY	14
VII. COMMON ISSUES AND CHALLENGES	16
A. Ensuring the Benefits Go to Farmers	16
B. Incomplete Incentive	16
C. Lack of Permanence/Cost/Benefit	17
D. Structures	17
VIII. AVENUES FOR FUTURE POLICY DEVELOPMENT AND INNOVATION	18
A. Obtaining other Social Benefits	18
B. Program Improvements.	18
C. Using Cross-Compliance to Ensure Compliance with Environmental Laws.	19
D. Providing Additional Public Benefits	19
CONCLUSION	20
APPENDIX	21

Authors

This guide was produced by the Center for Agriculture and Food Systems at Vermont Law School. The lead author of this report is **Jess Phelps**. Jess is Associate General Counsel at the Lyme Timber Company and an Adjunct Professor at Vermont Law School.



About the Center for Agriculture and Food Systems at Vermont Law School

The Center for Agriculture and Food Systems trains law and policy students to develop real-world solutions for a more sustainable and just food system.

To do this, CAFS educates students through a comprehensive array of residential, online, and experiential courses. Students can pursue a degree or certificate in food and agriculture law as a Master's, JD, or LLM student.

CAFS' diverse course offerings, Food and Agriculture Clinic, and varied degree options give students the opportunity to explore food and agriculture law from a variety of perspectives and experiences. CAFS is also a center for research and advocacy. As a clinician in the Food and Agriculture Clinic or as a Research Assistant, students can work with local, regional, national, and international partners and engage in law and policy work geared toward addressing food systems challenges related to the environment, public health, the economy, food security, and animal welfare. Working with project partners, students can develop legal tools and policy recommendations for stakeholders across the food system, including farmers, food producers, entrepreneurs, distributors, consumers, legislators, and administrators. For more information visit www.vermontlaw.edu/cafs.

The views expressed herein are the views of the author only, not of the Lyme Timber Company or Vermont Law School.

This project is made possible with funding from the National Agricultural Library, Agricultural Research Service, US Department of Agriculture.



National Agricultural Library
U.S. DEPARTMENT OF AGRICULTURE

Introduction

A frequent challenge faced by farmers maintaining their land is the associated property tax burden.¹ In an area with rising property values, if land is taxed at its highest and best use, increased taxes can result in strong pressure to sell (as the income from the land as farmland is often not sufficient to cover the taxes or, more likely, the farmer can earn a greater return from selling the land for a more intensive use).² Given the crucial role that farmland plays, both locally and as part of our national food system, all states have developed some type of preferential tax treatment for farmland.³ These programs generally allow farmers to pay taxes on their land at its current (agricultural) value rather than its assessed value for another non-farming use—with the idea that this tax treatment will help keep the land farmed or at least lessen the farmers' need to sell land for development to meet rising tax obligations.⁴

THIS GUIDE IS INTENDED TO PROVIDE AN OVERVIEW OF CURRENT USE PROGRAMS THAT APPLY TO FARMLAND NATIONALLY.

TO THIS END, THIS GUIDE:

1. explains what current use programs are generally;
2. examines the origins and motivations behind current use programs;
3. considers the current public policy rationales for such efforts;
4. evaluates how these programs work;
5. details common attributes of current use programs;
6. uses Vermont as a case study for a more in-depth examination of program function at a farm level;
7. identifies some common challenges associated with current use programs; and
8. includes general recommendations about how current use programs could be further adapted to meet the contemporary needs of the farmland preservation movement.

Current use programs are an important tool in the farmland preservation toolbox and this Guide intends to provide a working framework toward understanding the theory and practice of such programs to keep agricultural lands working.



I. What Are Current Use Programs?

As noted in the introduction, current use programs are programs designed to lower taxes on agricultural lands thereby lessening the pressure to convert these lands to a more intensive use.⁵ Rising property taxes, in the absence of such efforts, could force a farmer's hand even where continued productive activity is the farmer's desired land use. In short, current use lowers property taxes for farmland to:

1
lessen the conversion pressure; and

2
help keep these lands farmed.

In exchange for this property tax relief, the farmer must agree to keep the land in use for farming and meet other eligibility requirements which vary significantly from state to state. Depending upon the state, there may also be exit penalties associated with ultimately withdrawing the lands from these programs (to discourage conversion and to recoup some of the state's foregone tax revenue). A quick reference chart, profiling some of the general requirements and attributes of each state's program is attached as a table included as [Appendix A](#).



II. The Origins of Current Use—Addressing Land Use Conversion

In the post-World War II period, there was an increasing awareness that important farmland was being lost to development at a surprising pace.⁶ Farmland, particularly farmland near urban areas, was frequently targeted for suburban development, given the relatively low price compared to land in more developed areas, and the fact that the land was often level and well drained (making it ideally suited for building activity).⁷ The development of the interstate highway system further exacerbated suburban sprawl and the loss of prime farmland during the 1960s and 1970s.⁸ These factors gradually gave rise to the contemporary farmland preservation movement at the local, state, and federal levels.⁹

One of the early tools designed to partially address this concern was the creation of current use programs designed to lessen pressures for farmers to convert lands to more intensive use in the face of rising property values.¹⁰ While current use did not directly ensure that these lands remained in farmland use, it removed some of the pressure to convert.¹¹ “Since 1957, every state has responded to development pressures by allowing or requiring the preferential property tax treatment of farmland, and in some states other open space land . . . [T]he most common policy assesses the land at its value in its current agricultural or open space use.”¹² As will be further explored, taxing agricultural land at its use value, rather than its fair market value, can help keep lands in farming use. This provides several societal benefits, which are addressed in the following section.



III. Understanding the Policy Rationales for Current Use Programs

Several public policy rationales underlie current use programs. These include reducing conversion pressure; protecting valuable farmland; providing general tax benefits to farmers; and aligning property taxes with use of community services. Each of these are addressed in detail below.

A. Reducing Conversion Pressure

The first, and perhaps most obvious, policy rationale for current use programs is the desire to keep working lands working and to lessen pressure on farmers to convert these lands to a more intensive use.¹³ Lands used for farming will almost always have a lower value than the same lands in a more intensive use, such as commercial development or housing.¹⁴ Legislators may sometimes be persuaded that it generally seems unfair to allow market pressures to force development

of a farm in the face of rising property values as this displaces farmers whose lands have been overtaken by development trends through no fault or action of their own.¹⁵ While an economic incentive remains for farmers to sell working lands to developers in a rising real estate market, current use is intended to prevent a forced sale while still allowing for sale subject to a state's specific requirements related to the duration and durability of enrollment.

B. Protecting Farmland

In addition to the benefit provided to farmers by reducing conversion pressure, keeping these lands open and available for farming also provides correlated public benefits.¹⁶

This broad list of public benefits helps to explain, in part, why efforts to preserve farmland have generally benefitted from widespread support.¹⁷ Current use can also provide support to small scale producers by providing access to land as some state programs permit lands under a lease to a qualifying farmer to qualify for this treatment. Consequently, there is an incentive for large landowners to lease lands to small farmers and obtain this tax advantage where available.¹⁸

THE PUBLIC BENEFITS ASSOCIATED WITH FARMLAND PRESERVATION GENERALLY FALL INTO A FEW LARGE CATEGORIES:

1. preventing urban sprawl;
2. protecting scenic viewsheds;
3. addressing the environmental impacts of working lands;
4. protecting local foodsheds;
5. providing general agricultural support;
6. securing the food supply;
7. ensuring operational viability; and
8. protecting the rural economy.¹⁹

C. Providing General Tax Benefits to Farmers

Third, these programs are often motivated by a general desire to provide tax breaks to farmers to lessen their general tax burden (aside and apart from the land preservation rationale discussed above).²⁰ Farmers have considerable political clout even in this era when farmers account for less and less of the total US population, which explains their ability to

advocate for positions that provide specific benefits to this sector.²¹ Additionally, agricultural production is viewed as having unique importance (both at the local level and nationally) and there are numerous policy rationales for protecting this sector or treating it differently than other industries—leading to this and other forms of supports.²²

D. Aligning Property Taxes with Use of Community Services

Fourth, some advocate a fiscal basis for such programs.²³ For example, “cost of Community Service studies have shown that farmland generates more in local property tax revenue than the cost of the local services it uses. Farmland needs very few public services such as sewer and water lines or schools. By contrast, residential development places a fiscal burden on local government to build schools, provide police and fire services, and to build and maintain [infrastructure].”²⁴ In short, keeping working lands working prevents suburban sprawl, facilitates and channels development to more dense areas, and, in turn, helps a community manage infrastructure-

related expenditures.²⁵ Additionally, given the fact that farmland use requires less community services, taxing these lands at a level closer to their carrying cost is viewed as equitable because it brings taxation in line with the amount of government services that these lands require.

Overall, current use programs are an important component of general efforts at farmland preservation—often coupled with zoning and conservation easement purchase programs—that have taken on increasing importance in the past few decades.



IV. How Do They Work?

In a current use program, farmland is assessed at its agricultural value rather than its fair market value, which results in the farmer paying less in property tax. As explored above, these programs are intended to lower taxes to help keep working lands working. In exchange for this lower taxation, the farmer generally must agree to keep the land farmed. However, this requirement varies depending on the jurisdiction based on how long the agreement lasts and whether there are any penalties if the use is ultimately changed.

Typically, there are a few requirements for enrollment in a current use program, including those related to the size of the farm, the status of the farm operation, or the size of the farming operation (income from farming or other measuring thresholds). The motivation behind these requirements is to ensure that these tax breaks are targeted at viable agricultural lands to avoid providing subsidies to large landowners who are not farmers. The next section will explore a few of the principal attributes of these programs.



V. Common Attributes of Current Use Programs

Although programs vary from state to state, there are common elements associated with most differential tax programs focused on farmland. The chart included in [Appendix A](#) to this Guide provides a very high-level summary of each applicable state program.²⁶

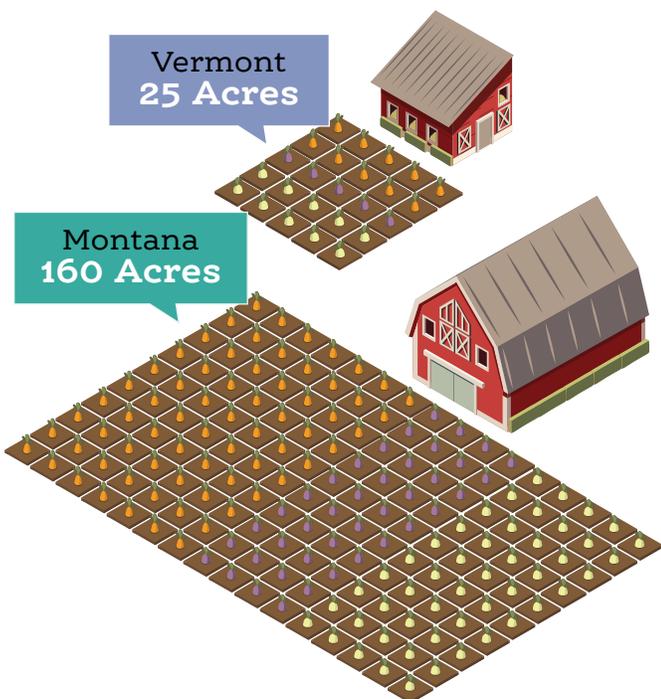
A. Eligibility Requirements

Eligibility is a critical consideration. As discussed above, the primary concern is that the farmland that is receiving the beneficial tax treatment is a farm (or that the targeted social benefit is being achieved).

States address this in a variety of ways. The two most common approaches are requirements related to the actual farm (size, location, and income) and related to the farmer operating the applicable lands.

1. FARMLAND-RELATED CRITERIA

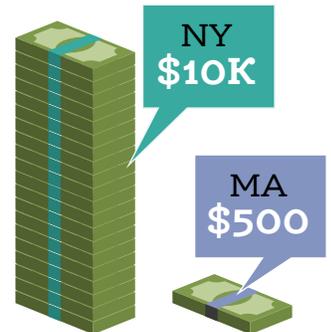
In most states, a certain amount of farmland is required to qualify for the benefit. For example, Vermont requires 25 acres of land, in most instances, to qualify for current use.²⁷ Montana, by contrast, requires 160 acres.²⁸ Notably, some states recognize these programs do not work with all forms of agriculture, such as a small-scale market farm producing vegetables for a farmers' market.²⁹ To address this, some states allow smaller farms to gain this tax status based upon a smaller acreage if certain income thresholds are met.³⁰



2. FARMER-RELATED CRITERIA

Most state programs reflect a policy desire for these lands to actually be farmed rather than simply providing a tax break to landowners with large tracts of land that is not in active agricultural production.³¹ As a result, many programs require a farmer to be involved with the land either as owner or operator under a long-term lease. These requirements are often income-related, ranging from New York's requirement that the operator make at least \$10,000 in farm income to qualify³² to \$500 in Massachusetts.³³

In addition to these income-based requirements, states frequently require several years of use as farmland before lands can be enrolled.



A GOOD EXAMPLE OF THIS REQUIREMENT IS MAINE'S FARMLAND TAX LAW.

Maine requires lands to be used for two years before qualifying for preferential tax treatment. However, Maine also allows for provisional waiver of this requirement for new farmland while also allowing recapture if the farmer fails to use the land for farming production or meet the statutory requirements.³⁴

FOR MORE INFORMATION, PLEASE VISIT:
[Lincoln Inst. of Land Policy, Farmland Tax Law: Maine](#)

Overall, states are flexible regarding what constitutes farmland. The challenge for these programs is to create a program that is broad enough to provide widespread incentives for landowners to enroll, but also prevents possible abuses (real or perceived) and the tax leakage associated with perhaps being overinclusive (i.e., providing a tax incentive to farms under no real threat of conversion).³⁵

B. The Scope of the Benefit

The scope of the tax benefit provided by current use programs is an obvious driver for farmer participation. The tax benefit for farmers generally amounts to the reduced value they are obligated to pay in property tax.³⁶ This tax benefit is set by state law and the mechanism the state uses to determine the state tax

rate for enrolled lands. Depending on the state and how the property tax is structured, this can result in substantial property tax benefits accruing to the farmer.³⁷ There are a few primary pathways for taxing which often interrelate.

First, and most common, is the direction to assessment bodies that farms be assessed at their use value, rather than their fair market value.³⁸ Instructions vary on how this calculation is determined, but generally the instruction is to assess the land without regard to neighborhood characteristics or consideration of highest and best use.³⁹

Second, many states set different assessment ratios or taxation rates with lower rates of taxation for agricultural lands.⁴⁰ This can involve a lower percentage capitalization rate than commercial or residential properties, which results in lower taxes.

Third, other states determine the rate across the state. For example, in Vermont, a Current Use Advisory Board sets a use value for different land use types across the state from year to year. In 2021, the Board set the taxable rate for farmland as \$405 an acre.⁴¹ The scope of the tax advantage varies from community to community based on the applicable property areas as this rate is set at a statewide rather than local value.

Fourth, some states set different rates to accomplish additional objectives. For example, Maine allows municipalities to exempt farms from tax if the land has been protected by an agricultural preservation easement conveyed to the municipality.⁴² Maryland provides heightened tax benefits for lands protected by agricultural preservation easements conveyed to the Maryland Agricultural Land Protection Foundation (MALPF).⁴³

Many of these mechanisms are combined by states to work in concert or apply to different land uses or priorities. It is common for a state to require assessment use value and also have a lower tax rate applicable to these lands to increase the tax savings. For example, Tennessee assesses land at its current use value and uses a different assessment ratio than for other lands, which results in the final, lower tax rate for qualifying agricultural lands.⁴⁴

Overall, the approaches states take to providing favorable tax treatment use many similar principles, but there is wide variation in how these tax schemes work in practice given states' priorities and tax

structures generally. It should also be noted that enrollment in current use does not impact the price the land can be conveyed for by the farmer. Current use is not a permanent requirement or restriction upon land and although some penalties may be accrued upon exiting from enrollment, these will not affect the actual sales price (unless the exit penalty is specifically negotiated to be paid by the purchaser). Notably, in some areas without development pressure, current use may be viewed favorably by the market given that the lower taxes will lower operating costs where the land is likely to remain in agricultural use.

C. Length of Enrollment and Transfer of Enrollment

As will be profiled, if eligibility requirements are no longer met or if the farmer wishes to exit the program, there may be associated penalties. Depending on the state requirements and the exit penalty, a farmer may want to consider whether the tax savings as compared to the exit penalty are a sufficient incentive for enrollment. This will obviously depend on how the state program is structured and how long the farmer believes they will farm the land, among other considerations (such as the likelihood that the next landowner may wish to continue the enrollment). Many states do not impose an exit penalty and allow a farm to receive preferential tax treatment for as long as it remains in agricultural use. Other states require

a specific lock-up period, whether by entering into a formal agreement with the state or as a function of enrolling the lands. The length and nature of the exit penalty varies considerably from state to state.

Most programs allow for a successor farmer to continue to receive the tax benefits from current use through re-enrollment either as part of the sale process or after closing. The parties to a transfer must carefully consider the timing requirements to ensure the current landowner is not unintentionally subject to penalties or a much higher than anticipated tax burden.

D. Exiting from the Program

One of the hallmarks of current use programs is the treatment of landowners upon exit and binding obligations imposed on landowners by the program. There are three common approaches for addressing lands withdrawn from the program, ranging from imposing no penalty to the imposition of a percentage penalty that is often tiered to a percentage of the property's fair market value to a rollback of the back tax incentives that the farmer received through their enrollment.

1. NO PENALTIES/FREE EXIT

Many states do not impose a penalty for withdrawing from the program, such as Iowa.⁴⁵ Essentially, this structure allows a landowner to enroll farmland and gain beneficial tax treatment, but allows a farmer to exit whenever they so choose with the only detriment being the land becomes subject to the unadjusted higher tax rate as applicable. This approach could be viewed as motivated by a general desire to provide farmers with beneficial tax treatment, rather than an express farmland preservation goal. It does, however, lessen the pressure on a farmland owner to sell enrolled lands in the face of rising property values, with the caveat that a farmland owner can readily develop the land at their election.

2. PENALTY TIERED TO PERCENTAGE OF PROPERTY VALUE

Some states impose a penalty based on the market value of the property during the year of withdrawal. These withdrawal penalties can range from roughly 6 percent to 30 percent of the land's fair market value.

Some of these programs have a sliding scale where the withdrawal penalty gradually lessens over time and, if the property is enrolled in current use for a sufficient period, the withdrawal penalty eventually goes away completely.

One example is Connecticut's program.⁴⁶ In Connecticut, the withdrawal penalty is initially 10 percent of the fair market value for the first year of enrollment, with the percentage eventually going down to zero after more than 10 years of enrollment. Other states have differential percentages based upon farmland and forestland or based upon parcel size demonstrating much variation in how these penalties are assessed.

Overall, the percentage-based penalty imposes a significant deterrent to land conversion and should be carefully considered by a farmer seeking to enroll their lands in the program. The financial calculus is essentially whether the tax savings will be sufficient to offset the potential development penalty. This will hinge upon the degree of tax savings, the amount

of the withdrawal penalty (and whether this remains constant or diminishes over time), the future likely uses of the land (is development a potential), and the length of time the landowner anticipates that the property will be farmed.

3. TAX ROLLBACK

The final and most common approach is for a state to impose a tax rollback upon a landowners' exit from the program. In these states, the landowner is required to pay the difference between the taxes they paid versus the taxes they would have been required to pay at the higher valuation for a period of years. The years of rollback range from two years in New Jersey⁴⁷ to up to ten years in some Hawaii counties,⁴⁸ for example. The idea behind this penalty is that the state should recapture the tax breaks afforded to farmers if a property has not been enrolled for a sufficient period (and to provide some deterrent against conversion for enrolled lands). This deterrent is generally less significant than a fair market value

penalty but can still impose some deterrence against farmland conversion and represents a middle ground that most state legislatures have adopted in implementing their program.

4. OTHER PENALTIES

In addition to the penalties described above, some states go beyond rollback or percentage assessments and impose penalties for failing to notify the tax assessor of the land use change and impose interest on the rollback to increase the penalty amount. For example, Arkansas takes this approach.⁴⁹ Other states impose penalties for false certifications related to land eligibility as a deterrent against unwarranted enrollments.⁵⁰

Before enrolling in the program, close attention should be paid to any time commitments regarding enrollment, the transferability of the enrollment, and the potential penalty depending on the lock-up period if future development of the farmland, in whole or part, is a consideration.

E. Other Requirements

Other requirements can apply in some states depending on the state's goals for the programs.

Rhode Island, for example, requires a conservation or management plan for the operation of farmland.⁵¹ This requirement is more common for conservation land or forested land enrolled in state programs, but as noted, a limited number of states do require some form of conservation planning as a condition of enrollment.

While it is not common, some states also require public access to enrolled lands. For example,

Pennsylvania requires this for lands enrolled in its agricultural land preserve (which is a subset of lands enrolled in current use that are nonproductive).⁵² This requirement is also far more commonly applied to conservation land and timberland.

Overall, there are wide variations in how current use programs are designed, which are necessarily tailored to the development pressures and agricultural sector needs of a given state, and should be closely examined before enrolling farmland.



VI. Vermont as a Case Study

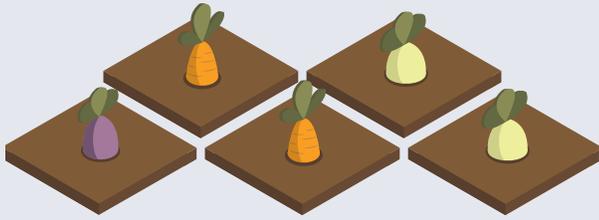
Vermont's Current Use Program provides a good example to demonstrate how these programs work in practice.⁵³ Vermont passed its current use program in 1978 as part of the state's efforts to keep working lands in active production and to serve as a deterrent against the development of farmland by raising the cost and to channel development into village and town centers.⁵⁴ Vermont's program applies to both farmland and forestland.

As of September 2016, there were more than 18,400 parcels of land in the state's current use program consisting of more than 2.4 million acres (roughly 1/3 of the state's land area).⁵⁵

Vermont's program focuses on development. If land is developed, as defined in statute, the land loses its favorable tax treatment and is subject to a development penalty.⁵⁶ Once land is enrolled in current use, it is subject to a contingent lien.⁵⁷ If the land is developed in the future, a lien will be placed on the property at that point in time, which helps to secure the state's interest in these lands and the development penalty (the land use change tax).⁵⁸ The current land use change tax is 10 percent of the property's fair market value at the time of development.⁵⁹

In 2021, Vermont farmlands enrolled in current use are assessed at \$405 an acre.⁶⁰ This tax rate is set by a state advisory board (the Current Use Advisory Board).⁶¹ Depending upon the local community and the development pressure being experienced, the level of this tax incentive or advantage to a participating farmer can vary, but as evidenced by the level of enrollment, it seems to be providing sufficient incentive for farmers to enroll.





FOR AGRICULTURAL LANDS, THERE ARE FOUR PATHWAYS FOR POTENTIAL ENROLLMENT:

1. If the landowner is a farmer as defined by statute (requiring 50 percent of the owner's annual gross income to come from farming).
2. If the landowner's land is farmed by a farmer under a written lease for a term of at least three years (providing an incentive to non-farmer landowners to keep these lands in active agricultural use).
3. If the landowner owns less than the qualifying 25 acres but produces farm crops that exceed \$2,000 per year in sales, the land can qualify for current use taxation (to allow smaller, more intensive farms to benefit from this tax preference).
4. If the landowner owns more than 25 acres that are actively used for farming (this is the most common route).

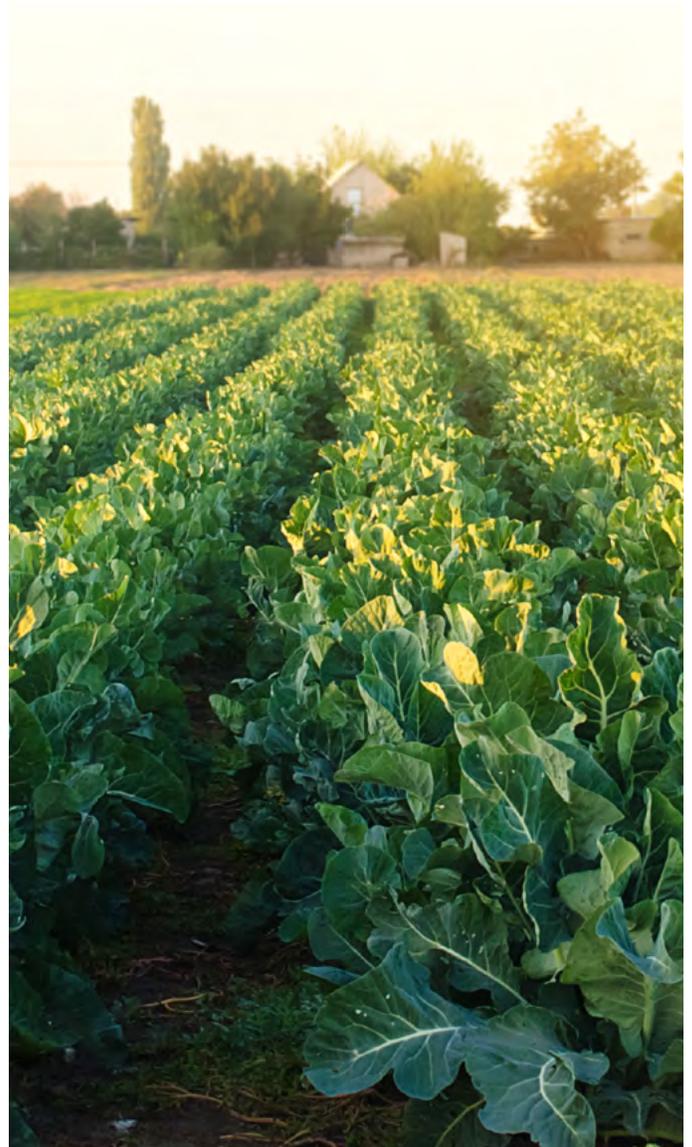


FARM BUILDINGS IN VERMONT CAN ALSO BE ENROLLED IF THEY:

1. are in active farming use by a farmer; or
2. are owned by a farmer or leased to a farmer under a written lease with a term of at least three years and are located on enrolled land or a homesite next to enrolled lands.⁶² Dwelling houses are generally not eligible, but can be if they are serving as farmworker housing.⁶³

Vermont also requires a farmer to comply with the water quality requirements in the state's environmental laws as well as any rules, permits, and other requirements, including Vermont's Required Agricultural Practices (the "RAPs").⁶⁴ Although a violation is maybe unlikely to result in revocation of current use status, the Vermont Agency of Agriculture, Food and Markets (VAAFAM) retains enforcement authority.

Overall, Vermont's program is in many ways typical of current use programs in how it provides favorable tax treatment to working lands (both in methodology and general eligibility of lands). Vermont's program varies somewhat, however, in having a substantial penalty associated with withdrawal and in requiring compliance with the state's Required Agricultural Practices.



VII. Common Issues and Challenges

There are several challenges associated with the administration of current use programs and critiques these program face in practice. This section addresses some of the most common criticisms for context.

A. Ensuring the Benefits Go to Farmers

One common critique of current use programs is that the often substantial tax breaks often do not go to farmers, but to large landowners who benefit from the tax savings in a manner not intended by the program, at taxpayer expense.⁶⁵ In New Jersey, for example, there are frequent criticisms of the state's farmland assessment program suggesting it provides support and tax breaks to "fake farmers."⁶⁶ Vermont has experienced some similar critiques, given the cost

and arguments that "developers can game the system to reap short-term tax benefits and develop land later on, and there's little oversight once land is enrolled on the program."⁶⁷ Addressing these challenges has been a priority for state legislatures considering these issues, which have occasionally resulted in changes to eligibility criteria but not wholesale revisions of the programs.

B. Incomplete Incentive

Conversely, in some states, the lower tax rates afforded under current use may be an incomplete incentive. "Differential assessment does not place a limit on the [overall] property tax rate, which usually consists of two parts: the local government tax and the school tax. School taxes can make up half to three-quarters of the local tax burden. As more people move into an area and new schools must be built, the school tax [apart from what is covered by differential use] can increase sharply."⁶⁸ Other states

face challenges by tiering their incentives to the productive value of the land over a rolling period.⁶⁹ In periods of commodity volatility, the swings in prices (and, in turn, to assessment methodologies) may create lags where the property tax burden is not aligned with current market realities thereby creating real challenges for farmers attempting to meet their tax obligations.⁷⁰



C. Lack of Permanence/Cost/Benefit

Some economists criticize current use because “it benefits all eligible landowners in return for a small supply response at the margin.”⁷¹ Basically, current use taxation benefits all qualifying landowners but only results in the protection of a more limited subset of farms each year. This tax benefit also occurs annually and as discussed above, farmers may be able to withdraw when desired. Consequently, it may be more efficient from a cost perspective to simply acquire development rights (or use regulatory mechanisms) to conserve farmland from a public policy perspective.⁷²

Some states provide for additional tax relief for farmland that is protected by conservation easements. For example, as noted above, Maryland and Maine provide additional tax incentives to a farm that is

covered by an agricultural preservation easement conveyed to the community to ensure the farm’s perpetual protection. In short, these programs attempt to target additional tax benefits to farms where the land’s continued availability for agricultural use is more firmly assured.

There are also arguments for targeting the program to specific types of farmland under actual threat (based, for example, on farmland loss or development pressures in a specific geography) or for moving away from temporary tax advantages and toward efforts to secure permanent protection of the farmland.⁷³ To date, however, attempts to narrow current use taxation or eliminate it altogether have not gained much traction.

D. Structures

Structures are often a challenging component of current use schemes as some structures are needed to support the farming operation. As noted in Vermont, a farmer’s residence will not be entitled to beneficial use, but farmworker housing can qualify.⁷⁴ In other states, defining the lines as to what structures will and will not be taxed at a use value will require close attention (as will future decisions on siting and locating future structures and improvements to minimize any potential adverse property tax consequences). For example, some states, such as Wisconsin, provide that the current use treatment only applies to bare land.⁷⁵ Other states provide for preferential taxation for agricultural structures, such as Virginia.⁷⁶ Last, a handful of states provide that farmhouses can qualify for taxation at use value.⁷⁷

Depending on the type of farm operation, the definition of agricultural structures and how these are taxed is worth particular attention as the line between agricultural and commercial uses is often blurred. A farm operator should understand how their facilities may be treated as this will be a consideration in locating and designing the overall operation. From a policy perspective, these policies need to be carefully evaluated to ensure the tax incentives are allowing the farm to continue as a working operations, which may require some structures to carry out production activities.



VIII. Avenues for Future Policy Development/Innovation

Current use taxation schemes have been used now for several decades with a single guiding principle: lowering the tax burden on farmland to keep these lands farmed. This is a laudable, although sometimes controversial, objective.⁷⁸ Critics of current use taxation argue against the subsidy to farm owners discussed above because of the cost of the foregone tax revenue and the imprecision of the subsidy (covering non-farmers and farms that are not subject to any threat of conversion).⁷⁹ This section provides a few thoughts for future reform and policy innovation to expand the reach and impact of these programs and to help maintain the relevance and resonance of these efforts generally.

A. Obtaining Other Social Benefits

Policy makers have not engaged in much consideration of how the tax incentives associated with current use programs could be tailored to promote other social objectives. For example, could programs be expanded to provide additional or more favorable tax treatment to certain farmers, land uses, or sizes of farms without running afoul of state constitutional concerns and continuing to provide horizontal equity (treating equally situated parties equal)?⁸⁰ To address longstanding social equity issues and structural racism, could current use programs prioritize BIPOC owned or leased farms? Additionally, could those programs provide expanded incentives to farmers engaged in cooperative models of farming that increase land access, provide opportunities for economic development, and prioritize certain farming practices that enhance environmental outcomes? This could be an interesting area of future policy

development to adapt current use programs to meet an increasing set of societal needs. Policy makers should consider developing these new program changes alongside interested stakeholders who possess on the ground knowledge and expertise.

Overall, tailoring the level of tax advantages and the types of requirements that a farmer or farmland must meet to access preferential tax benefits is ripe for future policy innovation and programmatic improvement.

One example of such an approach is Nebraska's tax incentives for new and beginning farmers related to taxation of agricultural equipment.⁸¹ Another example is South Dakota's approach which allows property taxes for a new farmer to be "frozen" for up to the first five years of a new farmer's operation.⁸²

B. Program Improvements

Beyond obtaining other social benefits (particularly related to new and beginning farmers), another area for improvement is related to programmatic design, specifically the durability and targeting of enrollments.

1. IMPOSE A CONVERSION PENALTY/ROLLBACK OF TAXATION BENEFITS

One major and relatively simple improvement for current use programs would be to impose a development penalty to ensure lasting benefit. As discussed above, a host of states currently do not impose any requirements related to the period of enrollment or try to recapture any payments by imposing a negative incentive against conversion. Requiring farmers to enroll their lands for a period of years (and if they fail to do so, assessing some degree of rollback or other penalty) would provide greater public assurance of benefit and could also help to make these efforts more defensible against criticism. If the lands are to stay in agriculture, this sort of penalty would have very little operational impact.

2. TARGETING TAX BENEFITS TO AREAS UNDER THREAT

As discussed above, another programmatic improvement involves better tailoring categories of eligible lands to maximize the value of the public investment. Current use taxation currently paints a very broad brush generally treating all farmland the same, which is both under and over inclusive.⁸³ Better tailoring (and potentially narrowing) the types of farms that qualify for these benefits would result in less foregone tax revenue and could provide greater tax incentives to those farms and farmers where this support is most needed.⁸⁴

C. Using Cross-Compliance to Ensure Compliance with Environmental Laws

Additionally, policy makers could consider issues related to enforcement to ensure landowners and farmers receiving the benefits of preferential tax treatment comply with applicable environmental laws. As farming has become more intensive and the

environmental challenge of many types of farming operations have become widely recognized,⁸⁵ there has been increasing concern regarding the environmental impacts associated with the agricultural sector.⁸⁶

As noted above, the Vermont Agency of Agriculture, Food and Markets retains the ability to revoke this tax benefit for extreme environmental violations.⁸⁷ Conceivably, other states could explore whether a sort of cross-compliance mechanism could be utilized as another enforcement tool to better ensure farmers are meeting their obligations under relevant environmental laws. Although current use has historically narrowly focused on preventing development pressure from resulting in land conversion, adding environmental requirements may be appropriate given the level of societal investment that is going into providing these lands with favorable tax treatment.⁸⁸

D. Providing Additional Public Benefits

In addition to additional environmental compliance, states also could consider whether to impose additional requirements on enrolled lands to provide for other public benefits.

For example, given the benefit afforded to enrolled lands, requirements allowing public recreational access could be considered. This is a requirement for some lands enrolled in Pennsylvania's Clean and Green program.⁸⁹ This type of requirement obviously presents some challenges. First, if more requirements are attached to such programs, enrollment is likely to decline, as more farmers will determine that the costs of joining the program outweigh the benefits (particularly if public access is involved). Second, public access may be appropriate for some farm types, but it may be intrusive to other farming

operations so this issue must be considered in connection with any policy initiatives or reforms. In the Pennsylvania program, a separate category, agriculture reserve, allows farmers to receive preferential tax treatment for nonproductive lands consisting of more than 10 acres, while opening them to the public.⁹⁰ This approach could offer some degree of public benefit while also providing the public additional access to protected lands.

Overall, given the use and prevalence of current use programs to provide farmers with financial incentives across the country, giving such programs a closer examination and considering the possibility for expanding them, or using this investment as a mechanism to secure other priorities is worthy of periodic reexamination.

Conclusion

Current use programs play an important role in farmland preservation by reducing a farmer's need to sell in the face of rising property taxes and by lowering their operational costs in keeping these businesses viable. In exchange, the public gets a degree of assurance that farmland, at least temporarily, will remain in farmed use thereby providing an array of benefits including preservation of scenic spaces, potential environmental gains, and fiscal advantages based on the relative cost of services that farmland imposes as compared to more intensive land uses.

Whether the public will continue to support these efforts in the face of other fiscal pressures is, of course, somewhat unclear, but it is highly probable given the widespread adoption and utilization (as well as public support for farmers and farming generally) of current use programs across the country. Despite

the likelihood of continued property tax-related breaks for farmers, it may be worth considering whether these programs can be improved to provide additional public returns on the considerable investment in these lands through continued exploration of programmatic innovation in this area, whether through penalties for converting lands away from agricultural use where no such penalty current exists, or requiring additional steps to be taken by qualified farmers (such as compliance with environmental laws or providing some form of public access). Such efforts could increase a state's return on its investment in providing favorable tax status to these lands and could be helpful in continuing to ensure that current use programs play their intended role of lessening the financial pressure for farmland to be developed.



Appendix

QUICK REFERENCE GUIDE TO STATE CURRENT USE STATUTES

State ⁹¹	Statute	Land Enrollment Requirements	Farmer Enrollment Requirements	Taxation Method ⁹²	Development Penalty	Other
Alabama	Ala. §§ 40-7-25-1 -25.3.	If 5 acres or less, farmer may need to provide data to support enrollment.	None.	Current Use Valuation; Different Assessment Ratios; Value Determined by State.	3 years recapture.	
Alaska	Ala. Stat. § 29.45.060.	No acreage requirement.	Owner/ lessee must be actively engaged in farming/10% of gross income from farming.	Current Use Valuation.	7 years recapture (together with 8% interest).	Alaska also has a local option allowing for full or partial exemption of farm structures. Ala. Stat. § 29.45.050(t)
Arizona	Arizona Rev. Stat. § 42-12002 (1)(a) & (b).	Cropland: 20 acres. Permanent crops: 10 acres. Grazing land: must be able to support 40 animals. Other criteria apply to specialty crops.	Requirement of reasonable expectation of operating profit from farming, and land is required to be farmed for 3 of last 5 years.	Current Use Valuation; Different Assessment Ratios.	None; there is a penalty, however, if the owner intentionally provides false information (liability for tax difference plus 25% penalty).	Land and improvements involved in agritourism is expressly included in the definition of agricultural property.
Arkansas	Ark. Code § 26-26-407(b).	None.	None.	Current Use Valuation; Value Determined by State.	None, there is a penalty for failure to give notice of land use change (up to 3 years of taxes at new use value).	
California	Cal. Revenue and Taxation Code § 421; Cal. Const., Art. 13, § 8.	100 acres (possible combination for multiple tracts) or if the area has established smaller thresholds.	None.	Current Use Valuation.	Penalty of 12.5% of market value (local option for higher rollback) if the land is withdrawn before the contract expires (min. duration of 10 years).	The state provides for some reimbursement to local governments for lost tax revenue; the state also has a separate exemption for fruit and nut trees, and grapevines.

State ⁹¹	Statute	Land Enrollment Requirements	Farmer Enrollment Requirements	Taxation Method ⁹²	Development Penalty	Other
Colorado	Colo. Rev. Stat. § 39-1-102 through 103; Colo. Const., Art. X, Section 3(1)(a).	None.	Land must have been in agricultural use for 2 years before enrollment; must be managed for gaining a monetary profit (but no income requirement).	Current Use Valuation; Different Assessment Ratios.	None.	2-acre exclusion for residence, but structures are included if related to ag operation.
Connecticut	Conn. Gen. Stat. § 12-63.	None. Assessor has substantial discretion to determine whether the land is farmland (looking at a variety of factors).	None.	Current Use Valuation.	Penalty of 10% during first year of enrollment (percentage falls to 0 after 10 years).	The state also has a local option farm abatement program to exempt buildings from tax (in full or part). Ct. Gen. Stat. § 12-81m.
Delaware	Del. Code, tit. 9, § 8239 – 8336; De. Const. art. VIII, § 1.	No minimum size, but if less than 10 acres have to meet certain income requirements.	Gross sales of agricultural productions of at least \$1,000 the preceding two years.	Current Use Valuation; Value Determined by State.	10 years recapture; there is also a 20% penalty for failure to notify taxing authority of use change.	All structures are ineligible for current use treatment.
Florida	Fla. Stat. § 193.431, Fl. Const. Art. VIII § 4.	None.	No income requirement, but good faith commercial agricultural use requirement.	Current Use Valuation.	None.	Florida also has exemptions for environmentally endangered lands and lands secured by conservation easements.
Georgia	Ga. Code. Ann. §§ 48-5-7, 48-5-7.1, 48-5-7.5.	No minimum, but 2,000-acre maximum per owner.	Property must be owned by individual, or if a family farm, 80% of income must come from Georgia agriculture.	Different Assessment Ratios.	10-year commitment; penalties vary upon how much of the term is left.	Barns/silos included, residences are not; state also has an exemption for conservation use.
Hawaii	In Hawaii, property tax is assessed at county level. Programs exist but must be evaluated county by county.	N/A	N/A	N/A	N/A	N/A

State ⁹¹	Statute	Land Enrollment Requirements	Farmer Enrollment Requirements	Taxation Method ⁹²	Development Penalty	Other
Idaho	Idaho Code Ann. § 63-620K through 605.	5 acres (if less have to meet income requirements/ length of farming requirements).	Land use by owner or leased for bona fide lessee.	Current Use Valuation; Value Determined by State.	None.	There may be a management plan required based on enrollment type.
Illinois	35 Ill. Comp. Stat. § 200/1-60; 200/10-110 – 200/10-147.	None.	The land must have been agricultural land for preceding 2 years.	Current Use Valuation; Value Determined by State.	None.	Some structures (but not the dwelling) may qualify for current use.
Indiana	Ind. Code § 6-1.1-4-4.5(e), 4-13, 4-13.2.	None.	None.	Current Use Valuation; Value Determined by State.	None.	
Iowa	Iowa Code §§ 441.21(1)(e) -441.21(1)(g) and 441.21(12).	None.	Land must be used in good faith for farming purposes.	Current Use Valuation.	None.	Iowa also has a similar program for school taxes; nonresidential structures qualify for current use treatment.
Kansas	Kan. Stat. Ann. §§ 7-1439(b)(1); 1476.	None.	None.	Current Use Valuation; Different Assessment Ratios.	None.	Farmhouses expressly excluded.
Kentucky	KRS 132.450 Ky. Rev. Stat. §132.010, 450.	10 acres or more of crop/ livestock production; 5 acres or more horticultural production.	None.	Current Use Valuation.	None, but state may levy additional tax associated with change in use.	Farmhouses not eligible for current use valuation; income-producing buildings can qualify.
Louisiana	La. Stat. Ann., § 47:2301-2307; 3:4321.	3 acres, or meets gross income tests.	None.	Current Use Valuation; Value Determined by State.	None, but there is a penalty for false certifications (5x the tax savings).	

State ⁹¹	Statute	Land Enrollment Requirements	Farmer Enrollment Requirements	Taxation Method ⁹²	Development Penalty	Other
Maine	Me. Rev. Stat. Ann. Tit. 36, § 1101-1136, 1105, 1108-36, 1112-B-36.	5 acres (contiguous); 15,000-acre cap on enrollment).	Gross farm income of at least \$2,000 per year during 1 of preceding 2 (or 3 of last 5) years.	Current Use Valuation; Value Determined by State.	5 years recapture (farmland); there is also an additional penalty (25%) for failure to notify of land use change).	Maine allows for a new farmer to provisionally qualify (without meeting the 2-year requirement); Maine also has a local option for additional/alternative taxation for lands under easements conveyed to a municipality.
Maryland	Md. Code, Tax-Property § 8-209-8-211; 301-308, 13-502(a).	3 acres (with some exceptions available for smaller tracts).	Average gross income of at least \$2,500 if under 20 acres.	Current Value Valuation; Other Method.	Penalty of 5% if greater than > 20 acres; 4% if < 20 acres (plus potential surcharge/interest).	Maryland also provides a local option in addition for lands under easement to MALPF (statewide agency holding ag preservation easements).
Massachusetts	Mass. Gen. Laws ch. 61A 1-24.	5 contiguous acres.	At least \$500 in annual sales receipts from farming. Land must be actively devoted to farming for the tax year (and two immediately preceding years).	Different Tax Rates.	5 years recapture.	
Michigan	Mich. Comp. Laws § 324.36101 – 36117.	For farms > 5 acres, but < 40 acres, more than 51% must be in active agriculture and annual gross income must be \$200 per acre of tillable land; For more than 40 acres, at least 51% must be in active ag use. Different criteria apply to specialty farms.	Specialty farms must have gross annual income of \$2,000.00.	Other Method.	The farm owner must enter into an agreement with the state (at least 10 years). If terminate, must repay last 7 years of credits).	Farmland can include residence and farm buildings. State reimburses local government's lost tax revenue.

State ⁹¹	Statute	Land Enrollment Requirements	Farmer Enrollment Requirements	Taxation Method ⁹²	Development Penalty	Other
Minnesota	Minn. Stat. § 273.11, 111., 13.	10 acres.	None.	Current Use Valuation; Different Assessment Ratios; Full or partial exemption.	3 years recapture.	Minnesota has two other programs allowing metropolitan areas and other communities to address land preservation concerns through preferential tax treatment.
Mississippi	Miss. Code Ann. § 27-35-50(4) (b).	None.	None.	Current Use Valuation; Different Assessment Ratios.	None.	
Missouri	Mo. Rev. Stat. § 137.015- § 137.018, Mo. Rev. Stat. § 137.021.	None.	None.	Current Use Valuation; Different Assessment Ratios; Value Determined by State.	None.	Missouri includes buildings and structures used for ag use.
Montana	Mont. Code Ann. § 15-7-201 ~ § 15-7-203, Mont. Code Ann. § 15-7-206 ~ § 15-7-210, Mont. Code Ann. § 15-7-212.	160 acres or income requirements.		Current Use Valuation; Different Assessment Ratios; Value Determined by State.	None.	
Nebraska	Neb. Rev. Stat. § 77-1343 - § 77-1347; Neb. Rev Stat. § 77-1359; Neb. Rev. Stat. § 77-1363; Neb. Rev. Stat. § 77-1371; Neb. Rev. Stat. § 77-1374 ~ § 77-1377; Neb. Rev. Stat. § 77-201.	No acreage size, but must be outside of corporate boundaries of any sanitary/ improvement district, city, or town unless protected by a conservation easement.	None.	Current Use Valuation; Different Assessment Ratios; Different Tax Rates.	None.	Nebraska also has a separate tax credit for qualified beginning farmers for personal property used in production agriculture.
Nevada	Nev. Rev. Stat. §361A.020 §361A.030; Nev. Rev. Stat. §361A.130- §361A.140.	None.	Ag use – a business venture that has produced a minimum gross income of \$5,000 in the previous year from farming.	Current Use Valuation; Value Determined by State.	7 years recapture.	

State ⁹¹	Statute	Land Enrollment Requirements	Farmer Enrollment Requirements	Taxation Method ⁹²	Development Penalty	Other
New Hampshire	N.H. Rev. Stat. Ann. § 79-A:2; N.H. Rev. Stat. Ann. § 79-A:4; N.H. Rev. Stat. Ann. § 79-A:5.	10 acres (if under 10 acres, can qualify if producing annual income of at least \$2,500).	None.	Current Use Valuation.	Penalty of 10% of fair market value.	New Hampshire also has a local option for farm structures/land under farm structures.
New Jersey	N.J. Rev. Stat. § 54:4-23; N.J. Rev. Stat. § 54:4-23.3; N.J. Rev. Stat. § 54:4-23.7b; N.J. Rev. Stat. § 4:1C.	5 acres.	Gross annual sales of \$500 for first 5 acres, plus average of \$5 per acre for each additional acre.	Current Use Valuation; Value Determined by State.	2 years recapture (plus the year in which the conversion occurs).	Annual certification requirement; land must have been in ag use for 2 prior years.
New Mexico	N.M. Stat. § 7-36-20.	1 acre (unless used for orchard crops, poultry, or fish production) If used for grazing, must be sufficient to support one animal unit.	None.	Current Use Valuation.	None, but there is a penalty for failure to report land use change to assessor.	
New York	N.Y. A.G.M. Law § 301-306.	7 acres.	Annual gross income of \$10,000 plus over the preceding two years.	Current Use Valuation; Value Determined by State.	5 years recapture (multiplied by tax savings of most recent year) if fail to remain in ag use for 8 years, 6 if in an ag district). There is an additional penalty for failure to notify assessor of land use change.	Land use agricultural structure is eligible. New York also has additional credits for school taxes, limited use ag structures and certain farm buildings.
North Carolina	N.C. Gen. Stat. §§ 105-277.2-277.7; 277.14-15.	10 acres (5 acres for horticultural).	Average income of at least \$1,000 during preceding 3 years.	Current Use Valuation; Value Determined by State.	3 years recapture.	Property must have been owned for 4 years, but if enrolled by prior owner, can roll over.
North Dakota	N.D. Cent. Code 57-0201(1), 57-02-27, 57-02-27.2.	ND has criteria for determining whether the land is agricultural (which relates to parcel size/ developed uses).	None.	Current Use Valuation; Different Assessment Ratios.	None.	

State ⁹¹	Statute	Land Enrollment Requirements	Farmer Enrollment Requirements	Taxation Method ⁹²	Development Penalty	Other
Ohio	Ohio Rev. Code §§ 5713.30- .38.	10 acres.	If less than 10 acres, average gross income of at least \$2,500 from farming.	Current Use Valuation; Value Determined by State.	3 years recapture.	
Oklahoma	Okla. Stat. tit. 68 § 2817.	None.	None.	Current Use Valuation; Value Determined by State.	None.	
Oregon	Or. Rev. Stat. § 308A.050-308A.128.	2 acres.	If not in an exclusive agricultural zone, gross income of at least \$3,000 if 30 or more acres (less income if smaller parcels).	Current Use Valuation; Other Method (based on location).	10 years recapture (exclusive farm zone); 5 years recapture (nonexclusive farm zone).	Land under farm buildings, include a home site, can be included. For land that is nonagricultural, a home site can be included if half the owner's income is from farming.
Pennsylvania	7 P.S. § 5490.1-.13; 137b.1-b.133.	10 acres.	Gross income of at least \$2,000 from farming (not required for ag reserve).	Current Use Valuation; Value Determined by State.	6 years recapture.	For land classified as ag reserve, these lands are open to public use.
Rhode Island	R.I. Gen. Laws § 44-5-27-2 – 27-3, 44-27-9, and 44-5-39.	5 acres.	Gross income of at least \$2,500 during 1 of last 2 years.	Current Use Valuation.	Penalty 10% of fair market value if fewer than 6 years, dropping to 0% if enrolled for 15+ years.	The property must have a written conservation plan; annual certification requirement.
South Carolina	S.C. Code Ann. §§ 12-43-220, 232, and 233.	10 acres.	If less than 10 acres, farm must have at least \$1,000 in gross farm income in 3 of last 5 years.	Current Use Valuation; Different Assessment Ratios.	5 years recapture. There is also an additional penalty for failure to notify the assessor of the land use change.	Eligible uses include agritourism if related to a primary ag use.
South Dakota	S.D. Codified Laws §§ 10-6-31-33, 10-11-56; 10-12-42.	20 acres.	Gross income requirements.	Current Use Valuation; Value Determined by State; Different Tax Ratios.	None.	For new/ beginning farmers, a county can freeze property taxes for first 5 years of ownership at election.

State ⁹¹	Statute	Land Enrollment Requirements	Farmer Enrollment Requirements	Taxation Method ⁹²	Development Penalty	Other
Tennessee	Tenn. Code Ann. § 67-5-1001-1009.	15 acres, 1,500 acre of land per taxing jurisdiction limit.	Gross income from farming averaging over \$1,500 annual over rolling 3-year period.	Current Use Valuation; Different Assessment Ratios.	3 years recapture.	
Texas	Tex. Tax Code § 23.41-.46.	None.	Farming primary occupation/ source of income. Land must have been in ag use for 3 consecutive years before claiming.	Current Use Valuation.	3 years recapture.	Landowner must be an individual; partnerships, corporations, or organizations are not eligible.
Utah	Utah Code § 59-2-501, 59-2-515.	5 acres; if less than 5 acres, there is some flexibility if connected with other lands; lands in subdivision or planned unit are not eligible.	Land must produce in excess of 50% of the average agricultural production per acre for the given area/ county (which can be waived); 2 years prior agricultural use required.	Current Use Valuation; Value Determined by State.	5 years recapture (Max.).	Structures are not eligible for current use.
Vermont	32 V.S.A. § 3750 et seq.	25 acres.	The land must be farmed by a qualified farmer (with various income/ operational requirements).	Current Use Valuation Full/partial exemption.	Penalty 10% of fair market value.	Vermont reimburses local governments for lost tax revenue. Vermont also requires an annual certification for continuing compliance. Farm buildings are allowed to qualify (including farmworker housing).
Virginia	Va. Code Ann. § 58.1.3230 – 3239.	5 acres unless specified in local ordinance.	None.	Current Use Valuation.	5 years recapture.	Virginia allows counties to incorporate additional tax advantages for longer-term commitments. Structures allowed; farmhouses are not.

State ⁹¹	Statute	Land Enrollment Requirements	Farmer Enrollment Requirements	Taxation Method ⁹²	Development Penalty	Other
Washington	Wash. Rev. Code §§ 84.34.0010-.34.380.	20 acres.	Various income criteria based on parcel size.	Current Use Valuation.	7 years recapture (plus accrued interest and 20%).	
West Virginia	W. Va. Code §§ 11-1A-3, 11-1A-10, 11-3-1.	None.	If greater than 5 acres, must produce agricultural products valued more than \$1,000. If under 5 acres, must produce agricultural products valued more than \$500.	Current Use Valuation.	None.	1 acre surrounding homestead is excluded.
Wisconsin	Wisc. Stat. § 70.32, § 74.485.	None.	None.	Current Use Valuation.	Conversion charge tied to number of acres (ranging from 5-10%).	Wisconsin also has a farmland preservation credit (which involves a 10-15-year commitment) and provides a per acre payment. Valuation only applies to bare land.
Wyoming	Wyo. Stat. § 39-13-101, 102(b)(x), 103(x); Wyo. Stat. § 11-51-101-107.	No acreage limited, but cannot be part of platted subdivision (unless greater than 35 acres).	Annual gross incomes of at least \$500 for owned land; \$1,000 for leased land.	Current Use Valuation. Different Assessment Ratios; Value Determined by State.	None.	Hemp production is specifically allowable as an agricultural use. Farm structures allowed to receive benefit of current use, but not those for housing.

Endnotes

- 1 See, e.g., Tara A. Sheldon, *No Farms, No Food: Local Taxation and the Preservation of Connecticut's Farmland*, 45 CONN. L. REV. 1045, 1048-49 (2013).
- 2 See, e.g., Max J. Pfeffer & Mark B. Lapping, *Farmland Preservation, Development Rights and the Theory of the Growth Machine: The Views of Planners*, 10 J. RURAL STUDIES 233, 234-35 (1994).
- 3 These programs also often apply to forestland and other land use types as defined by state law (including, for example, in some states, conserved lands). This Guide focuses on current use programs applied to farmland, but many of the concepts/policy rationales apply equally to these other land uses.
- 4 These programs are referred to as tax abatement, differential taxation, and current use programs depending upon how the actual preferential tax program is implemented by the state. For the purposes of this Guide, these programs will be generically referred to as current use programs (regardless of how the program specifically operates or is referred to in each jurisdiction).
- 5 TOM DANIELS & DEBORAH BOWERS, *HOLDING OUR GROUND: PROTECTING AMERICA'S FARMS AND FARMLAND* 4 (1997).
- 6 See, e.g., WILLIAM H. WHYTE, *THE LAST LANDSCAPE* 1-15 (1968) (profiling farmland loss and development trends in this period in the author's Brandywine Valley); see also TIM LEHMAN, *PUBLIC VALUES, PRIVATE LANDS: FARMLAND PRESERVATION POLICY, 1933-1985* (1995) (profiling the origins of these efforts).
- 7 See, e.g., BENJAMIN ROSS, *DEAD END: SUBURBAN SPRAWL AND THE REBIRTH OF AMERICAN URBANISM* 39-57 (2014).
- 8 See, e.g., ADAM ROME, *THE BULLDOZER AND THE COUNTRYSIDE: SUBURBAN SPRAWL AND THE RISE OF AMERICAN ENVIRONMENTALISM* 205-06 (2001).
- 9 Jerome G. Rose, *Farmland Preservation Policy and Programs*, 24 NATURAL RESOURCES J. 591 (1984) (profiling the farmland preservation movement). Farmland preservation today encompasses a large toolbox of different policies and programs designed to help farmers gain access to land, including the use of agricultural conservation easements to secure farmland's continued availability for agriculture (which can provide a number of other farmland access-related benefits, including assistance in making the farmland more affordable for the next generation of farmers by removing its development value). See Jess R. Phelps, *Defining the Role of Conservation in Agricultural Conservation Easements*, 44 ECOLOGY L. Q. 627 (2017) for an overview/more background regarding the use of this tool in the farmland preservation movement.
- 10 See, e.g., Frederick D. Stocker, *How Should We Tax Farmland in the Rural-Urban Fringe?*, 54 PROC. ANN. CONF. OF TAXATION, 463, 463-71 (1961) (exploring the early origins and motivations for current use programs).
- 11 RICHARD W. ENGLAND, *PREFERENTIAL ASSESSMENT OF RURAL LANDS IN THE UNITED STATES: A LITERATURE REVIEW AND REFORM PROPOSALS 2*, WORKING PAPER, LINCOLN INSTITUTE OF LAND POLICY (2011).
- 12 Richard W. England & Robert D. Mohr, *Land Use and Current Use Assessment*, in *ECONOMICS AND CONTEMPORARY LAND USE POLICY: DEVELOPMENT AND CONSERVATION AT THE RURAL-URBAN FRINGE* (Robert J. Johnston & Stephen K. Swallows eds., 2006) (citing A. C. Morris, *Property Tax Treatment of Farmland: Does Tax Relief Delay Land Development*, in *LOCAL GOVERNMENT TAX AND LAND USE POLICIES IN THE UNITED STATES*, at 144 (H.F. Ladd ed., 1998). Maryland was the first state to adopt such legislation – which makes sense given the amount of farmland lost in the DC suburbs in that period. See Richard W. England, *Preferential Assessment of Rural Land in the United States: A Literature Review and Reform Proposals 4*, Working Paper, Lincoln Institute of Land Policy (2011).
- 13 CONSERVATION LAW FOUNDATION, *CURRENT USE VALUATION AND TAX INCENTIVES FOR URBAN AREAS: STATE LAW COMPARISONS AND POSSIBLE APPLICATIONS IN THE NEW ENGLAND STATES 1-2* (2016), <https://landforgood.org/wp-content/uploads/LAPP-Current-Use-Valuation-and-Tax-Incentives-for-Urban-Areas.pdf>.
- 14 See, e.g., Center for Agriculture and Food Systems, *Property Tax Savings for Farmland*, <https://farmlandaccess.org/propertytax/> (last visited May 2, 2021).
- 15 Joan M. Youngman, *Taxing and Untaxing Land: Current Use Assessment of Farmland*, TAX ANALYSTS, STATE TAX NOTES, Sept. 5, 2005, at 728.
- 16 Thomas L. Daniels, *Assessing the Performance of Farmland Preservation in America's Farmland Preservation Heartland: A Policy Review*, SOCIETY AND NATURAL RESOURCES, 2019, at 1-3 (providing an overview of farmland preservation in the “heartland” of these efforts—the mid-Atlantic).
- 17 Jeffrey Kline & Dennis Wichelns, *Public Preferences Regarding the Goals of Farmland Preservation Programs*, 72 LAND ECONOMICS, Nov. 1996, at 538 (profiling public support and motivations for this type of programming generally).
- 18 See, e.g., Ben Waterman, *The Land that Produces Two Thousand*, UVM EXTENSION NEW FARMER PROJECT, Nov. 6, 2013, <https://newfarmerproject.wordpress.com/2013/11/06/the-land-that-produces-two-thousand/> (exploring qualifying land and new and beginning farmers under Vermont's current use program).
- 19 Current use programs are only one form of policy designed to conserve farmland. For a summary of other efforts, which dovetail with current use in purpose and scope, see Phelps, *Supra* note 9, at G27.

- 20 See, e.g., Jane Malne, *Preferential Property Tax Treatment of Land*, Lincoln Inst. Land Policy 8, Working Paper WP93JM1, https://www.lincolnst.edu/sites/default/files/pubfiles/143_malme93.pdf; but see Elaine S. Povich, *After Long Fight, Some Farmers Get Relief from High Property Taxes*, PEW CHARITABLE TRUSTS, Sept. 21, 2017, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/09/21/after-long-fight-some-farmers-get-relief-from-high-property-taxes> (arguing that some states' formulas for the taxation of farmland have failed to keep up with current taxation schemes particularly when these formulas use a rolling average for calculating profitability which does not account for market swings).
- 21 See, e.g., P. J. Huffstutter, *U.S. Farmers Fret as Property Taxes Soar Amid Souring Incomes*, REUTERS, June 7, 2016, <https://www.reuters.com/article/us-usa-farmland-taxes/u-s-farmers-fret-as-property-taxes-soar-amid-souring-incomes-idUSKCN0YT28R> (discussing this within the context of the boom/bust in farm commodity prices and the impact in lagging property tax valuations).
- 22 THOMAS L. DANIELS & JOHN C. KEENE, *THE LAW OF AGRICULTURAL LAND PRESERVATION IN THE UNITED STATES 11-15* (2018). The special treatment that agriculture enjoys within the taxation realm is not unique and also exists within the land use and environmental realms based on the sector's uniqueness or exceptionalism. As farming intensifies for some production forms, this exceptionalism, particularly within the environmental law context, has come under additional scrutiny. See, e.g., Margot Pollans, *Drinking Water Protection and Agricultural Exceptionalism*, 77 OHIO ST. L. J. 1195 (2016).
- 23 Am. Farmland Trust, *Farmland Info. Ctr., Cost of Community Services Studies*, https://s30428.pcdn.co/wp-content/uploads/sites/2/2019/09/Cost_of_Community_Services_Studies_AFT_FIC_201609.pdf (last visited May 2, 2021).
- 24 DANIELS & KEENE, *Supra* note 22, at 43.
- 25 See, e.g., Am. Farmland Trust, *Farmland Info. Ctr., New Hampshire Current Use Taxation*, <https://farmlandinfo.org/law/new-hampshire-current-use-taxation/> (last visited May 2, 2021).
- 26 Please note that the chart provided in Appendix A is intended to be a very high-level summary of some of the principal provisions of these programs rather than a comprehensive or exhaustive treatment of these provisions. The chart, however, will give you a sense of how these programs work and some of the common attributes and distinctive elements of current use programs from state to state.
- 27 32 V.S.A. § 3752(1).
- 28 MONTANA CODE ANN. § 15-7-202.
- 29 See, e.g., Maryland, Department of Assessments and Taxation, *The Agricultural Use Assessment*, <https://dat.maryland.gov/realproperty/Pages/The-Agricultural-Use-Assessment.aspx> (last visited May 10, 2021) (exploring Maryland's program requirements for farms consisting of less than three acres).
- 30 For example, Ohio allows a farm less than ten acres (the minimum acreage needed to qualify) to receive preferential tax treatment if the farm has gross income from farming activities in excess of \$2,500. See Ohio Rev. Code §§ 5713.30-.38.
- 31 See, e.g., Yasha Levine, *This Tax Day, 'Farms' Owned by the Rich Provide Massive Tax Shelter*, THE NATION, Apr. 14, 2011, <https://www.thenation.com/article/archive/tax-day-farms-owned-rich-provide-massive-tax-shelter/> (discussing some issues with current use as applied to large/wealthy landowners).
- 32 NEW YORK A.G.M. LAW § 301-206.
- 33 MASS. GEN. LAWS CH. 61A 1-24; Other requirements range in scope and focus. Texas, for example, requires that farming be the primary occupation/source of income while other states, such as Arizona, impose a reasonableness test related to the expectation of farm income (as determined by the farmer's investment/actions). See Appendix A for more detailed information regarding these requirements.
- 34 Lincoln Inst. of Land Policy, *Farmland Tax Law: Maine*, <https://www.lincolnst.edu/preferential-property/farmland-tax-law-maine-2019> (last visited May 10, 2021).
- 35 Some programs expressly provide for penalties if a landowner enrolls in the land when they are not entitled to this tax treatment, generally including for recapture of the tax savings the landowner receives plus an additional penalty. In Arizona, for example, the penalty is 25% of the tax savings and in Louisiana the penalty is 5 times the tax savings.
- 36 This Guide focuses on current use for property tax. States also provide similar preferential tax treatment for other types of taxation that a farmer should consider. For example, Nebraska provides some exemptions for personal property tax for new and beginning farmers in buying agricultural implements up to \$100,000. Lincoln Inst. of Land Policy, *Farmland Tax Law: Nebraska*, <https://www.lincolnst.edu/preferential-property/valuation-agricultural-horticultural-land-nebraska-2019> (last visited May 10, 2021).
- 37 In most states the foregone tax revenue is borne solely by the local government. A few states, such as Vermont, reimburse the local government from the state level for the lost tax revenue, which has the benefit of assisting communities where a high proportion of lands are enrolled in the program and avoids these communities bearing a disproportionate share of the cost of these efforts.
- 38 Vermont Law School, Center for Agriculture and Food Systems, *Farmland Access Legal Toolkit, How Does Differential Assessment Work?* <https://farmlandaccess.org/propertytax/#:~:text=When%20farmland%20is%20assessed%20based,the%20land%20in%20agricultural%20use> (last visited May 10, 2021).
- 39 See, e.g., ALASKA STAT. § 29.45.060 (Alaska's Farm Use Land Assessment Program).
- 40 See, e.g., MISS. CODE ANN. § 27-35-50 (Mississippi's Use Value of Agricultural Land Program) (applying different assessment ratios).
- 41 Vermont, Agency of Administration, Dep't of Taxes, <https://tax.vermont.gov/property-owners/current-use> (last visited May 5, 2021).
- 42 Lincoln Institute of Land Policy, *Maine: Local Option Agricultural Conservation Easement*, <https://www.lincolnst.edu/preferential-property/local-option-agricultural-conservation-easement-maine-2019> (last visited May 7, 2021) (summarizing Maine's local option program).

- 43 Maryland Department of Natural Resources, Tax Benefits of Conservation Easement Donations, https://dnr.maryland.gov/met/pages/tax_benefits.aspx (last visited May 3, 2021) (summarizing the various tax benefits involved with a conservation easement donation, including property tax assessment benefits by Maryland statute).
- 44 TENN. CODE ANN. §§ 67-5-1001-1009.
- 45 Lincoln Institute of Land Policy, Iowa: Assessment of Agricultural Property, <https://www.lincolnst.edu/preferential-property/assessment-agricultural-property-iowa-2019> (last visited May 1, 2021).
- 46 Lincoln Institute of Land Policy, Connecticut: Farmland Preservation (PA 490), <https://www.lincolnst.edu/preferential-property/farmland-preservation-pa-490-connecticut-2019> (last visited April 30, 2021).
- 47 Lincoln Institute of Land Policy, New Jersey: Tax Treatment of Agricultural Property, https://www.lincolnst.edu/pt-br/research-data/data-toolkits/significant-features-property-tax/access-property-tax-database/tax-treatment-agricultural-property?field_tax_state_tid%5B%5D=6876 (last visited Apr. 30, 2021).
- 48 Lincoln Institute of Land Policy, Hawaii: Agricultural Use Value, <https://www.lincolnst.edu/preferential-property/agricultural-use-value-hawaii-2019> (last visited April 30, 2021).
- 49 See ARK. CODE § 26-26-407(b).
- 50 See ARIZONA REV. STAT. § 42-12002.
- 51 Lincoln Institute of Land Policy, Farmland Assessment, <https://www.lincolnst.edu/preferential-property/farmland-assessment-rhode-island-2019> (last visited May 8, 2021).
- 52 Penn. Dep't of Agriculture, Clean and Green, https://www.agriculture.pa.gov/Plants_Land_Water/farmland/clean/Pages/default.aspx (last visited May 10, 2021).
- 53 For a more full treatment of Vermont's Current Use Program, see Conservation Law Found., Legal Food Hub, Vermont's Current Use Program, <https://www.legalfoodhub.org/resource/vermonts-current-use-program/> (last visited Mar. 15, 2021).
- 54 See Vermont Natural Resources Council, Current Use Taxation in Brief, <https://vnrc.org/community-planning-toolbox/tools/current-use-taxation/#:~:text=Use%20Value%20Appraisal%2C%20or%20E2%80%9%20%20CCurrent,rather%20than%20fair%20market%20value.> (last visited April 1, 2021).
- 55 Vermont Agency of Administration, Dep't of Taxes, Current Use, <https://tax.vermont.gov/property-owners/current-use> (last visited Apr. 13, 2021).
- 56 See Vermont Natural Resources Council, Current Use Taxation in Brief, <https://vnrc.org/community-planning-toolbox/tools/current-use-taxation/#:~:text=Use%20Value%20Appraisal%2C%20or%20E2%80%9%20%20CCurrent,rather%20than%20fair%20market%20value.> (last visited April 1, 2021) (providing a high-level discussion of development).
- 57 The contingent lien approach is a recent Vermont policy development. Before recent legislative changes on 2019, an actual lien existed on enrolled lands – which required a seller of land to obtain state approval for transactions even where development was not occurring. The contingent lien – which only springs into existence upon development – allows the state to more efficiently secure the land use tax. See Vermont Agency of Administration, Dep't of Taxes, Current Use, <https://tax.vermont.gov/property-owners/current-use> (last visited Apr. 13, 2021).
- 58 *Id.*
- 59 32 V.S.A. § 3757.
- 60 Vermont Agency of Administration, Dep't of Taxes, Current Use, <https://tax.vermont.gov/property-owners/current-use> (last visited Apr. 13, 2021).
- 61 *Id.*
- 62 32 V.S.A. § 3752(14).
- 63 *Id.*
- 64 32 V.S.A. § 3756(i)(2)(A).
- 65 See, e.g., J.A. Friedman, *New Jersey's Farmland Assessment: Welfare for New Jersey's Landed Gentry or Beneficial Open Space Program?*, 15 TEMP. ENV'T L. & TECH J. 83 (1996).
- 66 Ted Sherman, *How to Cut Your Property Taxes in NJ? Start a Farm.*, NJ.com, Sept. 18, 2019, <https://www.nj.com/politics/2019/09/how-to-cut-your-property-taxes-in-nj-start-a-farm.html>. There have been periodic efforts to increase program requirements to address real and perceived abuses. See, e.g., Sierra Club, New Jersey Chapter, Gov. Signs Fake Farmland Reform Bill, Apr. 15, 2013, <https://www.sierraclub.org/new-jersey/press-releases/0466>.
- 67 Kathryn Flagg, *Lawmakers Look to Crack Down on "Current-Use" Abuse*, SEVEN DAYS, Apr. 3, 2013, <https://www.sevendaysvt.com/vermont/lawmakers-look-to-crack-down-on-current-use-abuse/Content?oid=2243264>.
- 68 DANIELS & KEENE, *Supra* note 22, at 268.
- 69 April Simpson, Pew Charitable Trust, Property Taxes Sink Farmland Owners, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/01/16/property-taxes-sink-farmland-owners#:~:text=Nationally%2C%201.9%20million%20farms%20paid,taxes%20overall%20increased%20about%2027%25> (profiling this issue).
- 70 *Id.*
- 71 *Id.*
- 72 Robert A. Blewett & Julia I. Lane, *Development Rights and the Differential Assessment of Agricultural Land: Fractional Valuation of Farmland is Ineffective for Preserving Open Space and Subsidizes Speculation*, 47 AM. J. ECONOMICS & SOCIOLOGY, April 1988, at 195, 195-205.
- 73 See, e.g., JOHN E. ANDERSON & RICHARD W. ENGLAND, LINCOLN INSTITUTE OF LAND POLICY, *USE-VALUE ASSESSMENT OF RURAL LANDS: TIME FOR REFORM?* 43-44 (2015).
- 74 32 V.S.A. § 3752(14).
- 75 WISC. STAT. § 70.32.
- 76 VA. CODE ANN. §§ 57.1.3230-3239.
- 77 OREGON REV. STAT. §§ 308A.050-308A.128.
- 78 See, e.g., Jennifer Ifft & Todd Kueth, *The Ongoing Debate Over Farmland Taxation*, FARMDOC DAILY, Mar. 10, 2017, <https://farmdocdaily.illinois.edu/2017/03/the-ongoing-debate-over-farmland-taxation.html>.

- 79 Janet Malme, *Preferential Property Tax Treatment of Land*, Lincoln Institute of Land Policy 1-8, Working Paper (1993), available at https://www.lincolnst.edu/sites/default/files/pubfiles/143_malme93.pdf.
- 80 See, e.g., David A. Myers, *Open Space Taxation and State Constitutions*, 33 VANDERBILT L. REV. 83 (1980) (exploring constitutional concerns around uniformity in property taxation and constitutional amendments to allow for separate taxation of different property types at the state level).
- 81 State of Nebraska, Dep't of Revenue, *Beginning Farm Exemption for Personal Property*, https://revenue.nebraska.gov/sites/revenue.nebraska.gov/files/doc/pad/info/Beginning_Farmer.pdf.
- 82 Lincoln Inst. of Land Policy, *South Dakota: Valuation of Agricultural Property*, <https://www.lincolnst.edu/preferential-property/valuation-agricultural-property-south-dakota-2019> (last visited Mar. 14, 2021).
- 83 See ANDERSON & ENGLAND, *supra* note 73, at 43-45.
- 84 See RICHARD W. ENGLAND, LINCOLN INST. OF LAND POLICY *PREFERENTIAL ASSESSMENT OF RURAL LANDS IN THE UNITED STATES: A LITERATURE REVIEW AND REFORM PROPOSALS* 24-25 (2011).
- 85 See, e.g., J.B. Ruhl, *Farms, Their Environmental Harms, and Environmental Laws*, 27 *ECOLOGY* L. Q. 263 (2000) (profiling the environmental impacts of agricultural activities and the inability of environmental laws to regulate these activities).
- 86 *Id.*
- 87 32 V.S.A. § 3756(i)(2)(A). It is not clear how many farms, if any, have lost current use status for failure to comply with the state's RAPs, but this is a potential deterrent/enforcement tool to encourage compliance and to use to bring a non-conforming farm back into compliance with these principally water quality-related requirements.
- 88 See, e.g., Janet E. Milne, *Watersheds: Runoff from the Tax Code*, 34 VT. L. REV. 883, 890 (2010).
- 89 See WeConservePA, *Clean and Green: Pennsylvania's Preferential Tax Assessment Program*, <https://conservationtools.org/guides/44-clean-and-green> (last visited Apr. 3, 2021). Currently, access to lands protected through Pennsylvania's agricultural reserve, which applies to lands which are not used for commercial agricultural production but are set aside for open space use, must be open to the public (access which can be reasonably restricted by the farmer).
- 90 *Id.*
- 91 This chart generally uses the excellent data prepared by the Lincoln Institute of Land Policy for a thumbnail overview of how state current use programs applied to farmland operate in each state. See Lincoln Institute of Land Policy, *Tax Treatment of Agricultural Property*, https://www.lincolnst.edu/pt-br/research-data/data-toolkits/significant-features-property-tax/access-property-tax-database/tax-treatment-agricultural-property?field_tax_state_tid%5B%5D=6851 for additional background and data on each state's tax policies (last visited Apr. 25, 2021).
- 92 This chart uses the typology used by the Lincoln Institute of Land Policy (referenced in Note 1) in summarizing the different taxation methods used by various states, including current use valuation, different assessment ratios, value determined by state, and other methods. As will be indicated in this chart, some states use multiple methods in determining how to tax farmland to arrive at the final rate.