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No Farms, No Food: Local Taxation and the Preservation of Connecticut's Farmland Note

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Note

NO FARMS, NO FOOD: LOCAL TAXATION AND THE PRESERVATION OF CONNECTICUT'S FARMLAND

TARA A. SHELDON

Connecticut, once a state rich in farmland, has experienced significant loss of farmland in the past two decades. This Note takes a narrow focus on Connecticut's farmland preservation programs—specifically, how the continuing conversion of farmland has demonstrated that the design and implementation of Connecticut's programs have been ineffective in using local taxation as a tool to preserve farmland. In the middle of a drought, with rising food prices, and where one in six people are food insecure, it is the right time to be talking about this. Connecticut has an obligation to preserve farmland for food security, natural resources, and the welfare of its citizens. This Note recommends changes to the Connecticut General Statutes in order to clarify and strengthen Connecticut's position on farmland preservation, using California's strong and solid system of farmland property taxation as a starting point for how a state can help preserve its farmland. It then takes this local issue of farmland preservation to a more global level and looks at the interconnected effects of farmland loss and climate change from across the world to the backyard of Connecticut.

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NO FARMS, NO FOOD: LOCAL TAXATION
AND THE PRESERVATION OF CONNECTICUT'S FARMLAND

TARA A. SHELDON*

The Connecticut Valley is one of the most productive and valuable areas in the Northeast because of the long growing season and the proximity to cities and towns.

—U.S. Department of Agriculture¹

I. INTRODUCTION

The conversion of farmland occurs all over the United States, but Connecticut is especially sensitive to this problem. Between 1997 and 2002, Connecticut lost over 12% of its farmland, the highest percentage loss of any state in the country.² In 2002, farmland constituted 357,000 of Connecticut's 3.1 million total acres (for a total of approximately 11%); only 170,000 of those farmland acres were cropland. This is an enormous drop from 1945, when farmland made up half of Connecticut's total land.³ The loss of farmland in Connecticut has been hastened by a combination of developmental pressures coupled with rising land prices and a disconnect between federal, state, and local farmland preservation policies. Of particular importance are Connecticut's state and local farmland preservation policies, which have proven ineffective to address development pressures to convert farmland to non-agricultural uses. One of the main features of these farmland preservation programs is the classification and taxation of farmland. The continuing conversion of farmland has demonstrated that the design and implementation of Connecticut's programs have been ineffective in using local taxation as a tool to preserve farmland.

Part II of this Note details how urban sprawl has led to rising land prices and property taxes, which together impede farmland preservation. A brief background of federal, state, and municipal farmland protection programs explains how the lack of a cohesive, national framework and competition among local towns for revenue has led to disparate municipal farmland protection programs that lack the ability to effectively protect

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¹ U.S.D.A., LAND RESOURCES REGIONS AND MAJOR LAND RESOURCES AREAS OF THE UNITED STATES, THE CARIBBEAN, AND THE PACIFIC BASIN, U.S.D.A. HANDBOOK 296, 480 (2006).

² WORKING LAND ALLIANCE, A CALL TO FARMS! A MID-DECADE LOOK AT CONNECTICUT'S AGRICULTURAL LANDS 1 (2005), available at <http://www.workinglandsalliance.org/>.

³ *Id.* at 5.

farmland. Part III focuses on the taxation of farmland in Connecticut and how Public Act 490—Connecticut’s law that allows farmland to be assessed at its use value rather than its fair market value for local property taxation—has failed to fulfill the state’s policy of preserving farmland. The multitude of farmland definitions in different municipalities across Connecticut is examined in relation to the difficulty of implementing Public Act 490. Part IV of this Note recommends three different ways to address the problem of farmland preservation in Connecticut, including: (1) amending Public Act 490 to clarify important definitions; (2) creating transferable development rights as an incentive for landowners and municipalities to preserve farmland; and (3) using California’s unique approach to farmland preservation as a model for Connecticut. Lastly, Part V expands the issue of farmland preservation from not just a local concern but as one with global consequences.

II. THE CHALLENGES OF FARMLAND PRESERVATION AND STATE AND LOCAL RESPONSES

A. *Rising Land Prices and High Property Taxes as an Impediment to Farmland Preservation*

Urban sprawl and the ensuing development pressures have led to rising land prices, furthering the loss of farmland in the state. The sales prices offered by developers can be so high that they negate any incentives offered by the state to preserve farmland, such as the tax savings Connecticut offers farmers to maintain their agricultural land.⁴ The average farm real estate value per acre nearly doubled from 1995 to 2004,⁵ and property taxes during this period rose almost equally as fast. With farms experiencing an almost 44% increase in property taxes between the years 1997 and 2002, Connecticut had the second-highest increase in farmland property taxes of any state in the Northeast.⁶ Because of this, “most farmers [cannot] afford to buy land to start a farm or to add to their existing acreage; debt service payments and property taxes on new land often outweigh potential farm income.”⁷

⁴ See Conn. Gen. Stat. § 12-107a (2007) (providing Connecticut’s tax abatement policy for farmlands).

⁵ WORKING LAND ALLIANCE, *supra* note 2, at 2 (stating that for farmland, the average price per acre in 1995 was \$6,567 and in 2004 it rose to \$10,200). In 2012, the highest farm real estate values continue to be in the Northeast at \$4,780 per acre. Connecticut has the third-highest farm real estate values per acre in the entire United States at \$11,100 per acre. U.S.D.A., LAND VALUES 2012 SUMMARY 8–9 (2012) [hereinafter LAND VALUES 2012 SUMMARY], available at www.nass.usda.gov/Publications/Todays_Reports/reports/land0812.pdf.

⁶ WORKING LAND ALLIANCE, *supra* note 2, at 2.

⁷ *Id.*

B. Federal, State, and Municipal Farmland Protection Programs

As sprawl and the increasing need for developable land continues, “[t]he relentless and poorly coordinated development of Connecticut’s rural and suburban areas has led to a startling loss of state farmland.”⁸ The federal government does not present a united, cohesive front for farmland protection, but instead takes a limited role in this arena. Congress has delegated much of the work to the states, and often the states in turn delegate this role to their local towns.⁹ In home rule states, such as Connecticut,¹⁰ municipalities retain the most control over land use issues.

The idea is that local governments are in the best position to address local problems. For example, the federal government, through its Farm and Ranch Lands Protection Program, provides cost-share assistance funding for Connecticut’s Farmland Preservation Program of up to 50% of the project’s cost.¹¹ The Connecticut Farmland Preservation Program is a purchase of development rights (“PDR”) program, in which landowners sell an agricultural conservation easement to their property. The benefit is that farmers are able to receive money to continue or expand their farming operations, while the town is guaranteed that the land will only be used for agricultural purposes and can never be subdivided or developed.¹²

There have been several impediments to the state’s attempts to preserve farmland. First, although the state is able to pay up to \$20,000 per acre for the PDR, the average price paid by the state from 2007 to 2009 was only \$5,800 per acre.¹³ With an average farm real estate value per acre of \$11,100 in 2012,¹⁴ the incentives for farmers to sell their PDRs to the state are low when the amount they are being offered is only around 66%

⁸ *Working the Land*, WORKING THE LAND: THE STORY OF CONNECTICUT’S AGRICULTURE, <http://www.workingtheland.com/> (last visited May 1, 2012).

⁹ See Lawrence W. Libby, *Federal, State, and Local Programs to Protect Farmland* 1 (Nov. 13–14, 2003) (unpublished paper, Ohio St. Conference “What the Public Values About Farm and Ranch Land”), available at http://nercrd.psu.edu/Publications/rdpPapers/farmranch.libby_full.pdf (describing farmland protection policy as “an assemblage of disparate state and local programs”).

¹⁰ See CONN. CONST. art. X, § 1 (“The general assembly shall by general law delegate such legislative authority as from time to time it deems appropriate to towns . . . relative to the powers, organization, and form of government of such political subdivisions.”); Connecticut’s Home Rule Act, CONN. GEN. STAT. §§ 7-187–7-201 (2011) (granting certain powers to municipalities to enact regulations and policies to “protect or promote the . . . good government and welfare of the municipality and its inhabitants” (quoting CONN. GEN. STAT. § 7-148(c)(7)(H)(xiii) (2011))).

¹¹ AM. FARMLAND TRUST, CONSERVATION OPTIONS FOR CONNECTICUT FARMLAND: A GUIDE FOR LANDOWNERS, LAND TRUSTS & MUNICIPALITIES 9 (2010) [hereinafter CONSERVATION OPTIONS FOR CONNECTICUT FARMLAND], available at <http://www.farmland.org/documents/ConservationOptionsforCTFarmland.pdf>.

¹² *Id.*

¹³ *Id.* at 7.

¹⁴ LAND VALUES 2012 SUMMARY, *supra* note 5, at 8.

the value of what they would likely receive from developers.¹⁵ The track record of the Connecticut Farmland Preservation Program also lags behind other states in the region. Since 1978, the program protected only 30,000 acres of farmland in a twenty-five year period.¹⁶ During this same time period, Connecticut lost approximately 140,000 acres of farmland.¹⁷ State funding for farmland preservation was also dramatically lower compared to other states in the region, with at least four other states in the region outspending Connecticut for their farmland programs. This is especially troubling since Connecticut has both the highest percentage loss of farmland in the country and some of the highest property values in the region.¹⁸

Municipalities are the foundation of farmland protection in Connecticut, as they are responsible for the local planning and zoning regulations that impact conservation and development.¹⁹ Municipalities are required to have a plan of conservation and development (“POCD”) for their municipality that takes into account the “protection and preservation of agriculture,”²⁰ but that gives municipalities discretion to amend this plan if, in the judgment of the municipality, redevelopment would lead to special opportunities or there is a “trend toward lower land values.”²¹ Zoning regulations are then used to adapt land uses to conform to the adopted POCD.

By allowing municipalities the freedom to make their own land use decisions, farmland zoning districts can be changed to allow for increased development and thus more town revenue. The definition of what farmland consists of can vary, and a cohesive implementation of a farmland preservation strategy becomes almost impossible to coordinate among Connecticut’s 169 municipalities.²² For example, a Connecticut Superior Court upheld the decision of the Planning and Zoning Commission of the town of Monroe to rezone land designated within a residential and farming zone into a design business district zone so that a McDonald’s could be built.²³ The commission found that this change in

¹⁵ See WORKING LAND ALLIANCE, *supra* note 2, at 16 (stating that in some parts of Connecticut, the development rights are 66% of a property’s fair market value); LAND VALUES 2012 SUMMARY, *supra* note 5, at 8 (giving the average farm real estate value per acre in 2012 as \$11,100).

¹⁶ WORKING LAND ALLIANCE, *supra* note 2, at 3.

¹⁷ *Id.* at 18.

¹⁸ *Id.* at 4; LAND VALUES 2012 SUMMARY, *supra* note 5, at 8.

¹⁹ See CONN. GEN. STAT. § 8-2 (2011) (authorizing the zoning regulation of each town to regulate zoning “with reasonable consideration for their impact on agriculture”).

²⁰ *Id.* § 8-23(d)(10).

²¹ *Id.* § 8-23(a)(1).

²² See *Towns & Cities in Connecticut*, CT.GOV, <http://www.ct.gov/ctportal/cwp/view.asp?a=843&q=257266> (last updated July 27, 2012) (listing all the municipalities in Connecticut).

²³ *MacKenzie v. Planning & Zoning Comm’n of Monroe*, No. CV 116018055S, 2012 WL 1435245, at *1–2, *9 (Conn. Super. Ct. Apr. 2, 2012).

zoning was in accordance with the town's POCD and approved the change.²⁴ The court stated that "a commission is free to amend its regulations, and/or its zoning map, whenever time, experience and reasonable planning for contemporary or future conditions reasonably indicate the need for a change."²⁵ Here, Monroe felt that the addition of a McDonald's restaurant outweighed the need to preserve a farmland zoning district.

In another case, the Connecticut Court of Appeals held that a commercial horse boarding facility fell under the town of Middletown's agriculture zoning regulations.²⁶ Middletown's definition of agriculture in its zoning regulations was so broad as to permit a commercial horse boarding facility to be considered an agricultural use.²⁷ The court went on to compare Middletown's definition of agriculture to the definition of agriculture in the Connecticut General Statutes. Both definitions were described as being "circular, rather than restricted and explicit,"²⁸ resulting in a seemingly non-agricultural use falling under a seemingly all-encompassing definition of agriculture and farming.

Perhaps one of the more telling cases of how Connecticut views the protection of farmland is the Connecticut Supreme Court's decision upholding Glastonbury's town plan and zoning commission's approval of a subdivision.²⁹ Even though the plaintiffs argued that the "development of the land . . . would result in the irreversible elimination of major portions of prime agricultural land,"³⁰ the court held that the zoning commission did not need to consider any allegations regarding the destruction of agricultural land or the availability of alternatives that would prevent or reduce the destruction of agricultural land under the Environmental Protection Act.³¹

The court stated that "neither the legislature, nor any state agency, has mapped out and designated certain areas of the state as 'agricultural land'" and that the definition of agriculture in the Connecticut General Statutes was so broad that to include it in the term "natural resources" could lead to wide reaching and very likely unintended results—mainly that town zoning commissions would be required to consider alternatives "for every

²⁴ *Id.*

²⁵ *Id.* at *4.

²⁶ *Borrelli v. Zoning Bd. of Appeals of Middletown*, 941 A.2d 966 (Conn. App. Ct. 2008).

²⁷ *Id.* at 968–69, 973–74.

²⁸ *Id.* at 973–74.

²⁹ *Red Hill Coal., Inc. v. Town Plan & Zoning Comm'n of Glastonbury*, 563 A.2d 1347, 1348 (Conn. 1989).

³⁰ *Id.* at 1348–49 (internal quotation marks omitted).

³¹ *Id.* at 1350; CONN. GEN. STAT. § 22a-14 (2011).

subdivision application in the state.”³² The court found that the legislature has expressly chosen to protect agricultural land in certain situations, and only in these situations where agricultural land is expressly referred to will it be protected.³³

The problem, as seen in the cases above, is that the protection of agricultural land is left up to the judgment of each individual municipality, and their policies and goals for farmland preservation vary. As will be discussed in Parts III and IV, the State of Connecticut’s overarching farmland preservation policy is vital to determining what the overall goal of farmland protection is and how it will be implemented. Whether the state chooses to preserve all farmland, regardless of its agricultural output, or whether the food production of farmland is the ultimate goal, this determination will affect how the state defines different terms (from farmland to farming to agriculture) and how the state will then implement the policy.

III. THE TAXATION OF FARMLAND IN CONNECTICUT

The disconnect between federal, state, and local farmland preservation policies discussed in Part II is largely a result of the freedom given to municipalities in governing their own affairs. Connecticut’s home rule has a strong tradition dating back centuries and towns are reluctant to relinquish it.³⁴ Under home rule, Connecticut grants municipalities the ability to pass laws to govern themselves as they see fit.³⁵ The problem with this is that it leads to an assemblage of disparate state and local programs, depending on what each municipality sees fit for its own particular situation. Property taxes are an integral part of this equation, as “municipal budgets [in Connecticut] rely heavily on local property

³² *Red Hill Coal, Inc.*, 563 A.2d at 1352–53. CONN. GEN. STAT. § 22a-19(b) (2011) requires the consideration of:

[T]he alleged unreasonable pollution, impairment or destruction of the public trust in . . . natural resources of the state and [that] no conduct shall be authorized or approved which does, or is reasonably likely to, have such effect as long as, considering all relevant surrounding circumstances and factors, there is a feasible and prudent alternative consistent.

Id.

³³ *Red Hill Coal, Inc.*, 563 A.2d at 1351 (citing the “Agricultural Protection Act; [Connecticut] General Statutes §§ 22-26aa through 22-26ii; and [Connecticut] General Statutes § 12-107a, which affords owners of farmland a form of tax relief, both recognize the importance of farm and agricultural land and make special provisions to protect it”).

³⁴ Charles Proctor, *Wise Invention, or Duplication*, HARTFORD COURANT (Oct. 12, 2007), http://articles.courant.com/2007-10-12/news/0710120886_1_town-leaders-home-rule-local-leaders.

³⁵ See CONN. GEN. STAT. §§ 7-187–7-201 (2011).

taxes.”³⁶ Farmers are especially sensitive to the effects of property tax, since they rely on “large amounts of land, buildings and equipment” to support their operations.³⁷

A. State Policy Regarding Farmland Protection: Public Act 490

The State of Connecticut has realized the importance of preserving farmland, and enacted Public Act 490 (“PA 490”) as a way to combat the negative effects of property taxes on farmers.³⁸ This state law gives preferential treatment to farmland and reduces the property tax burden on farmers by allowing farmland to be assessed at its current use value rather than its highest and best use value, also known as fair market value (“FMV”).³⁹ Although the state provides a schedule of recommended land use values,⁴⁰ municipalities are not required to use them and may apply their own use valuation.⁴¹ Each farmer must apply for his land to be classified as farmland and, if it qualifies, the land is then listed and taxed on the town’s grand list as farmland.⁴²

Although the statute defines farmland as “any tract or tracts of land, including woodland and wasteland, constituting a farm unit,”⁴³ each town can have its own qualifications as to what constitutes farmland and there is no minimum acreage as to what constitutes a farm.⁴⁴ PA 490 provides a list of factors for the assessor to take into consideration, including the acreage of the land and how much of it is actually used for farming.⁴⁵ There currently is no definition as to what constitutes “farming” or “agriculture” under PA 490, only the brief definition of farmland as any

³⁶ *Tax Policies*, CONN. PLANNING FOR AGRIC., <http://www.ctplanningforagriculture.com/tax-policies.php> (last visited May 2, 2012).

³⁷ *Id.*

³⁸ CONN. GEN. STAT. § 12-107a (2011) (describing the legislative intent behind PA 490).

³⁹ *See id.* § 12-107c (describing the classification of land as farmland); *Tax Policies*, *supra* note 36 (detailing how PA 490 is implemented).

⁴⁰ CONN. GEN. STAT. § 12-2b(1) (2011); *see* CONN. FARM BUREAU ASS’N, PUBLIC ACT 490: A PRACTICAL GUIDE AND OVERVIEW 6 (2010), available at http://www.ct.gov/doag/lib/doag/marketing_files/complete_490guide_cfba.pdf (providing suggested land values per acre, based on quality of farmland, from 1972–2010).

⁴¹ CONN. GEN. STAT. § 12-63 (2011).

⁴² *Id.* § 12-107c(a)–(b).

⁴³ *Id.* § 12-107b(1).

⁴⁴ *Public Act 490—The Basics*, CONN. DEP’T OF AGRIC., <http://www.ct.gov/doag/cwp/view.asp?a=1366&q=259834> (last visited May 8, 2012).

⁴⁵ CONN. GEN. STAT. § 12-107c(a) (2011) (“In determining whether such land is farm land, such assessor shall take into account, among other things, the acreage of such land, the portion thereof in actual use for farming or agricultural operations, the productivity of such land, the gross income derived therefrom, the nature and value of the equipment used in connection therewith, and the extent to which the tracts comprising such land are contiguous.”).

tract of land “constituting a farm unit.”⁴⁶ Towns may request an advisory opinion as to what constitutes farmland under PA 490,⁴⁷ but the definitions of “agriculture” and “farming” in the Connecticut General Statutes indicate that the detailed list of possible farming and agricultural activities are inclusive rather than exclusive.⁴⁸ Section 1-1(q) broadly defines “agriculture” and “farming” to include activities that range from cultivation of the soil to dairying to raising bees and oysters.⁴⁹

Once approved by the town assessor, land will continue to be classified as farmland and taxed accordingly “until either use of the land changes or land ownership changes.”⁵⁰ If this happens, there may be a conveyance tax on the total sales price of the land.⁵¹ The operative clause is *may* be subject to a conveyance tax; the tax starts at 10% of the total sales price if the land is conveyed within one year of being designated as farmland, and decreases by 1% each year until no conveyance tax is owed once a property has been classified as farmland for ten years.⁵² However, the state’s attempt to use the conveyance tax as a penalty to dissuade conversion of farmland to non-agricultural uses and to further incentivize farmers to retain their land, along with reduced property taxes, has been ineffective. Even with the tax incentives for preserving farmland under PA 490, “farmers have seen an average 44% increase in their property taxes since 1997”⁵³ and the high prices offered to landowners by developers negate any penalty for selling their farmland for non-agricultural uses.⁵⁴

B. *The Power of Municipalities to Preserve Farmland: Enabling Tax Policies*

Connecticut’s General Statutes allow for a municipality to further reduce property taxes on farm-related property. First, in addition to the

⁴⁶ CONN. GEN. STAT. § 12-107b(1) (2011); *see also* CONN. FARM BUREAU ASS’N, *supra* note 40, at 10 (citing CONN. GEN. STAT. § 1-1(q) (2011)) (defining agriculture and farming).

⁴⁷ *See* CONN. GEN. STAT. § 22-4c(a)(4) (2011) (stating that the Commissioner of Agriculture may issue an advisory opinion as to what constitutes farming or agriculture at the request of a municipality, state agency, tax assessor, or landowner).

⁴⁸ *See id.* § 1-1(q) (broadly defining the terms agriculture and farming as used in the statutes); *see infra* notes 96–97, 137 and accompanying text (detailing the inclusive nature of agricultural and farming definitions in the Connecticut General Statutes).

⁴⁹ CONN. GEN. STAT. § 1-1(q) (2011).

⁵⁰ *Tax Policies*, *supra* note 36.

⁵¹ *Id.*; *see also* CONN. GEN. STAT. §§ 12-504a(a), (c) (2011) (detailing the conveyance tax on land classified as farmland).

⁵² CONN. GEN. STAT. § 12-504a(c).

⁵³ WORKING LAND ALLIANCE, *supra* note 2, at 21.

⁵⁴ A recent search of undeveloped land zoned for farming that was for sale in Connecticut found prices per acre ranging anywhere from around \$7,000 to over \$125,000. *See Connecticut Land for Sale*, LANDANDFARM.COM, <http://www.landandfarm.com/search/Connecticut-land-for-sale/> (last visited Aug. 24, 2012).

use-valuation of farmland under PA 490, the optional property tax abatement allows for a municipality to further reduce property taxes on farmland by up to 50% for a number of types of farm businesses.⁵⁵ Second, while Connecticut already exempts farm tools, animals, and other property of up to \$100,000 from property taxes under state law,⁵⁶ municipalities are given the option to provide farmers an additional exemption from property tax of farm machinery of up to \$100,000.⁵⁷ Lastly, the state provides a complete exemption of all property taxes for farm buildings and structures “used in the seasonal production, storage or protection of plants or plant material.”⁵⁸ On top of all these exemptions, municipalities can provide an additional property tax exemption, up to \$100,000 per eligible building, for any structure used exclusively in farming or for the housing of seasonal employees.⁵⁹

Certain towns have opted to enact some of these optional property tax abatements and exemptions for farmers, but decisions have varied across municipalities. For example, the town of Ashford originally provided a tax abatement up to 50% available only to dairy farmers.⁶⁰ This changed in 2005, when the town included fruit orchards in the classification of farmland properties eligible for additional property tax abatement.⁶¹ Although the town of Ashford claims that it is committed to “the preservation of farmland and open space,” the town specifically excluded from this additional property tax abatement any other viable farmland used for produce or livestock.⁶² The town of Coventry also utilizes the enabling tax policies for farmland protection, and allows an abatement of up to 50% of the property taxes, but only for dairy farms.⁶³ The town also gives an additional property tax exemption for farm machinery up to \$200,000.⁶⁴ Other towns have also cherry-picked which enabling policies to enact, with some allowing only an additional exemption on agricultural structures and others allowing only an additional exemption on farm machinery and

⁵⁵ CONN. GEN. STAT. § 12-81m (2011) (stating that the following businesses qualify for this optional property tax abatement: dairy, fruit, vegetable, nursery, and tobacco farms, commercial lobstering, and farms that employ nontraditional farming methods, such as hydroponic farms).

⁵⁶ *Id.* § 12-81(38) (exempting farm tools up to \$500); *id.* § 12-81(39) (exempting farm produce); *id.* § 12-91(a) (exempting farm machinery up to \$100,000).

⁵⁷ *Id.* § 12-91(b).

⁵⁸ *Id.* § 12-81(73).

⁵⁹ *Id.* § 12-91(c). This exemption does not apply to the farmer’s residence. *Id.*

⁶⁰ “An abatement is only available for dairy farmers.” ASHFORD, CONN., CODE § 16.2 (approved in 1996, repealed and replaced in 2005) (2007), available at http://www.farmlandinfo.org/documents/37559/Ashford_-_Property_Tax_Abatement.pdf.

⁶¹ *Id.* § 16.3.

⁶² *Id.* (“An abatement is only available for ‘dairy farms’ or ‘fruit orchards including vineyards.’”).

⁶³ COVENTRY, CONN., CODE OF ORDINANCES §§ 94-59 to 94-60 (LexisNexis Feb. 22, 2011).

⁶⁴ *Id.* § 94-35.

equipment with no additional tax abatement for any farmland.⁶⁵

Although a number of towns allow for additional exemptions for agricultural structures and equipment,⁶⁶ it seems as though a much smaller number of municipalities have authorized the optional additional property tax abatement for farmland. Of these municipalities, almost all limit the property tax abatement to dairy farms and/or fruit orchards.⁶⁷ The one exception seems to be the town of Wallingford, which allows for property tax abatements for the following farm businesses: dairy farms, fruit orchards, vegetable farms, and nursery farms.⁶⁸

C. *The Cost of Urban Sprawl: The Failure of Municipalities' Optional Tax Abatements and Exemptions to Fulfill Connecticut's State Policy of Preserving Farmland*

While it seems that many towns profess a commitment to the preservation of farmland,⁶⁹ implementing this commitment seems to be a different story. Connecticut's General Statutes clearly describe the state's

⁶⁵ See *Sample of Towns Which Have Adopted Enabling Tax Policies for Agriculture*, CONN. PLAN FOR AGRIC., http://www.ctplanningforagriculture.com/documents/ListingofTownswithAdoptedTaxPolicies_002.pdf (last visited Sept. 8, 2012) (listing only six towns that allow for an additional property tax abatement on farmland).

⁶⁶ See *id.* (listing eighteen towns that allow for additional tax exemptions for agricultural structures and/or equipment).

⁶⁷ The town of Bolton only allows a property tax abatement for dairy farms and specifies that only the portions used for tillable pasture (production feed for the animals) and permanent pasture, as well as land used for normal operations of the dairy farm, are considered part of the dairy farm property for tax abatement purposes. BOLTON, CONN., ORDINANCE PROVIDING FOR TAX ABATEMENT FOR DAIRY FARMERS (Nov. 16, 1992), available at <http://bolton.govoffice.com/> (follow "Town Ordinances and Charter" menu to "Ordinances" hyperlink; then follow "Tax Abatement for Dairy Farmers" hyperlink). The towns of Ashford and Woodstock only allow a property tax abatement for dairy farms and fruit orchards. ASHFORD, CONN., ORDINANCES & SPECIAL ACTS § 16.3 (2007), available at http://www.farmlandinfo.org/documents/37559/Ashford_-_Property_Tax_Abatement.pdf; WOODSTOCK, CONN., ORDINANCE REGARDING ABATEMENTS FOR DAIRY FARMS & FRUIT ORCHARDS (May 3, 1999), available at <http://woodstockct.gov/documents/forms/category/88-town-ordinances.html> (follow "Town Ordinances" hyperlink for PDF download). The towns of Cheshire and Glastonbury allow a property tax abatement for dairy farms only. CHESHIRE, CONN., CODE OF ORDINANCES § 17-9(d) (LexisNexis Oct. 13, 2010); GLASTONBURY, CONN., CODE OF ORDINANCES art. 3 § 18-31 (LexisNexis July 12, 2012).

⁶⁸ WALLINGFORD, CONN., CODE § 203-11 (1998). There may be other towns that provide for property tax abatements on more than solely dairy farms and/or fruit orchards, as well as property tax abatements on farmland in general. However, a review of the towns discussed on the Connecticut Planning for Agriculture website, as well as a general Internet search of town ordinances providing for farm abatements, did not reveal any additional information. The Town of Windsor's website states that it allows a lower tax assessment under PA 490 for farms, but does not specify anything more than this. Windsor Conservation Comm'n, *Preservation of Land for Agricultural Use*, TOWN OF WINDSOR CONN., http://www.townofwindsorct.com/cc/agricultural_use2.htm (last visited Aug. 24, 2012).

⁶⁹ See, e.g., ASHFORD, CONN., ORDINANCES & SPECIAL ACTS § 16.3 (2007), available at http://www.farmlandinfo.org/documents/37559/Ashford_-_Property_Tax_Abatement.pdf (detailing the town of Ashford's commitment to the preservation of farmland while limiting the property tax abatement to only dairy farms and fruit orchards, including vineyards).

commitment to preserving farmland in order to provide a readily available source of food, to preserve natural resources, and to advance the general welfare of the public.⁷⁰ The state suggests that a large variety of different types of farming would qualify as farmland and would thus be eligible for the additional municipality property tax abatement,⁷¹ further demonstrating the state's policy towards protecting as much Connecticut farmland as possible, regardless of specific farming or agricultural use.

The diversity of farming activities present in Connecticut can also be seen in a report of cash receipts from different farming commodities in the state.⁷² In 2011, for example, greenhouse and nursery cash receipts were the top contributor to Connecticut's overall cash receipts, with milk sales ranking second.⁷³ Combined total crops (such as vegetables, fruits, and greenhouse/nursery) represented 64.9% of total cash receipts for Connecticut in 2011 versus the 35.1% accounted for by all livestock (including milk).⁷⁴ While the reasons for municipalities' preferences for preserving dairy farms over other farming operations could be the subject of another paper, there is still the obvious question of why municipalities only provide the option of property tax abatements to dairy farmers, when these farms make up only 18% of Connecticut's farmland.⁷⁵

Even with Connecticut's seemingly strong policy towards farmland preservation, allowing municipalities the option to implement both the state's farmland valuation for an abatement of property taxes under PA 490, as well as other optional protections for farmland preservation, have failed. The problem with optionality can be seen in the assortment of property tax abatements that different municipalities enact (or choose not to enact), with many towns not enacting additional property tax abatements for the bulk of their farmland. Some towns may choose not to enact these optional tax abatements because it is not a requirement, and municipalities

⁷⁰ CONN. GEN. STAT. § 12-107a (2011).

⁷¹ See CONN. GEN. STAT. § 1-1(q) (2011) (listing a largely inclusive range of what constitutes "farming" and "agriculture"); CONN. GEN. STAT. § 12-81m (2011).

⁷² U.S.D.A., NEW ENGLAND AGRIC. STATISTICS, NEW ENGLAND CASH RECEIPTS 2011 2 (2012), available at http://www.nass.usda.gov/Statistics_by_State/New_England_includes/Publications/cashrec08.pdf.

⁷³ *Id.* "Greenhouse crops are plants or flowers grown in soil or other media for both eating purposes (vegetables) and for aesthetic purposes (flowering plants, green plants)." CONN. GREENHOUSE GROWERS ASSOC., *Assessing Agriculture Greenhouses: Guidelines for Connecticut Municipal Tax Assessors*, CONN. PLANNING FOR AGRIC. (June 2003), <http://www.ctplanningforagriculture.com/pdf/AssessingAgGreenhouses.pdf>. Common greenhouse crops in Connecticut are lettuce, salad greens, and tomatoes. CONN. AGRIC. EXPERIMENT STATION, *Commercial Greenhouse Production: Component and System Development*, U.S.D.A., <http://www.reeis.usda.gov/web/crisprojectpages/216567.html> (last visited Dec. 26, 2012).

⁷⁴ *Id.*

⁷⁵ See *Farmland Facts*, WORKING LANDS ALLIANCE, <http://www.workinglandsalliance.org/pages/facts.html> (last visited Aug. 24, 2012) (giving statistics from the 2007 U.S.D.A. Census of Agriculture).

often prefer higher land assessments and higher property tax rates to fund services.

A municipality's grand list is composed of the aggregate property valuation of taxable property within a town.⁷⁶ The property tax rate (also known as the mill rate) is determined by dividing the town's total budget by the net taxable grand list. In general, a higher grand list results in lower property taxes.⁷⁷ From the late 1990s to the early 2000s, grand list growth in Connecticut remained sluggish while property tax revenues increased exponentially.⁷⁸ This pattern has continued in recent years, as well, with communities proposing annual property tax increases in order to deal with slow, and sometimes diminishing, grand list growth that does not "cover increased expense in most communities."⁷⁹ The reason for this is that municipalities have to increase property taxes in order to continue to pay for public services.⁸⁰

[Because towns are so dependent] on property taxes to fund local public services[, they have] engage[d] in destructive competition for grand list growth that has resulted in bad land use decisions and costly and inefficient sprawl development. This sprawl means that development does not occur where the infrastructure to support it already exists but instead occurs in previously undisturbed areas where new roads,

⁷⁶ *Total Grand Lists by Town*, CONN. OFF. POL'Y & MGMT., <http://www.ct.gov/opm/cwp/view.asp?A=2987&Q=385044> (last updated Sept. 12, 2011).

⁷⁷ *FAQs*, TOWN OF PLAINVILLE, http://www.plainvilletown.com/Pages/Page_content/plainville_faq.aspx (last visited Aug. 24, 2012); see Letter from Gregg Schuster, First Selectman, to Colchester Taxpayers (Apr. 16, 2012), available at http://www.colchesterct.gov/Pages/ColchesterCT_WebDocs/Popularlinks/Budget/revletterfinal041612.pdf (describing the effect of total Grand List valuation on property taxes).

⁷⁸ REPORT OF THE STATE OF CONNECTICUT: BLUE RIBBON COMMISSION ON PROPERTY TAX BURDENS AND SMART GROWTH INCENTIVES 24 (2003), available at <http://www.cga.ct.gov/pd/FullBlueRibbonCommissionReportFinal.pdf>.

⁷⁹ *Connecticut Municipal Consortium for Fiscal Responsibility*, FED'N OF CONN. TAXPAYER ORGS., <http://www.ctact.org/default.asp?callcontent=yes&filename=ConsortiumMissionMikeGuarco.htm%20%20%20&location=Home&buttonname=Home> (last visited Jan. 7, 2012); see also Keith C. Burris, *Connecticut Needs Tax Relief*, West Hartford News (July 30, 2012), <http://www.westhartfordnews.com/articles/2012/07/30/opinion/doc5016b4a3ad5a4569338231.txt?viewmode=fullstory> (discussing how "Connecticut has one of the highest property tax burdens in the nation" and that there will be more property tax hikes in the years to come).

⁸⁰ *Id.* From 1998 to 2002, property taxes increased \$472 million due to tax rate increases, a number that "[e]xcludes increases caused by increase in property values." *Id.* Today, mill rates (which are determined by how much is needed to finance the town's yearly budget) continue to increase. See, e.g., Steven M. Mazzacane, *RTM Passes Budget with 2.8% Mill Rate Increase*, BRANFORD SEVEN (May 8, 2012, 6:57 PM), http://www.branfordseven.com/mobile/news/local/article_76bea4ca-997a-11e1-add1-0019bb30f31a.html (increasing the town of Branford's 2012 mill rate by 2.8% in order to finance the town's increased budget, including an increased education budget); Letter from Gregg Schuster, *supra* note 77 (increasing the town of Colchester's 2012 mill rate by 14.6%).

schools, sewers and other infrastructure must be built.⁸¹

At first glance, it seems fair that every property owner is equally responsible for his or her share of property taxes that go to fund the town's budget. But does every person in town benefit from public schools, roads, and sewage facilities? The answer, unfortunately, is no.

As one Connecticut court recognized, the "[t]axation of farmlands has continued to go higher and higher in all the towns because of the need for school construction, roads, sewage facilities, more services for those who built large housing projects and industrial developments without any added benefits to the farmer."⁸² Residential developments cost towns more in providing community services than they pay back to the municipality in property taxes. Farmland, on the other hand, produces more in revenue from property taxes than it requires in public services. In Connecticut, "for each dollar of property tax revenue generated" it costs a town an average of \$1.11 to service residential areas as opposed to \$0.31 to service farmland.⁸³ So farmland, even when it is valued at its use rate under PA 490, is still producing a "surplus to offset the shortfall created by residential demand for public services."⁸⁴

The State of Connecticut has recognized that sprawl is partly a result of towns' "fiscal imperative to grow municipal grand lists in order to raise the revenues needed to pay for local public services, particularly . . . public education."⁸⁵ One of the reasons behind PA 490 and allowing municipalities to further lower property tax rates on farmland was the idea of fairer taxation. However, towns are less likely to lower the valued assessment of farmland for property taxes when it would result in a lower grand list total of taxable property, and thus avoid any increase in property taxes for other (i.e., residential) citizens. Connecticut's Commission on Property Taxes has "found that local-option taxes levied on a municipality-by-municipality basis in a small state like Connecticut are generally counterproductive in that they tend to foster tax competition between communities and make high-tax towns that opt for additional taxes less competitive."⁸⁶

⁸¹ REPORT OF THE STATE OF CONNECTICUT, *supra* note 78, at 24—25.

⁸² *Bussa v. Town of Glastonbury*, 28 Conn. Supp. 97, 103 (1968).

⁸³ AM. FARMLAND TRUST & CONN. CONF. OF MUNICIPALITIES, PLANNING FOR AGRICULTURE: A GUIDE FOR CONNECTICUT MUNICIPALITIES 3 [hereinafter PLANNING FOR AGRICULTURE], available at <http://www.farmland.org/programs/states/ct/documents/PlanningforAgriculture--AGuideforCTMunicipalities.pdf> (detailing the cost of providing community services for residential and farmland areas in various Connecticut towns).

⁸⁴ *Id.*

⁸⁵ REPORT OF THE STATE OF CONNECTICUT, *supra* note 78, at 8.

⁸⁶ *Id.* at 9. The report also addressed methods such as increased state taxes and public funding as ways to decrease property taxes, see *id.* at 1, but the goal of this Note is to examine changes in administering municipal property taxes.

How a town views the need to increase taxable property within a municipality can be seen in the town of Bolton. In a recent board meeting, officials discussed the optional property tax abatement for farm buildings and seasonal employees. One board member stated that although he was in favor of this tax incentive for farms, the town should “keep in mind that the budget may be facing a decrease in state funds.”⁸⁷ Given the lack of towns committing to the optional property tax abatement for farmland, it is clear that towns are more committed to increasing their grand lists than to preserving farmland since these taxes are able to help make up for the gap in providing public services in urban areas. As towns are responsible for raising the majority of their budget, usually through property taxes, there is an incentive to maximize the value of all of the town’s real estate from a tax revenue perspective.

The urban sprawl that is taking over farmland serves both to accommodate booming populations and to increase property values. A side effect of the increased grand list brought about by new construction, however, is that it strains town budgets by increasing the demand for services and building infrastructure in formerly rural communities. Property taxes then must increase to offset these budget increases, which makes property taxes on farmland even less affordable for farmers. Since these taxes on farmland are what provide the surplus revenues to service residential neighborhoods, the loss of additional farmland due to the unaffordability of increasing property taxes is even more worrisome.

The town of Lebanon conducted a build-out analysis to look at the projected development over twenty years based on its population and building trends. The study found that developed land would increase by 2,850 acres and bring in \$2 million more in tax revenue for the town.⁸⁸ However, the cost of providing community services to these newly developed areas, including school services, would cost the town \$4.2 million.⁸⁹ With less farmland resulting from sprawl, the town would be left with a \$2.2 million deficit.⁹⁰ Simply put, the “tax revenues from

⁸⁷ *Open Space Acquisition and Preservation Committee Regular Meeting Minutes, TOWN OF BOLTON* (Feb. 11, 2010), available at <http://bolton.govoffice.com/vertical/Sites/%7B30EEBA3C-BE1C-42AE-911F-0E304A672785%7D/uploads/%7BE207452E-D7CE-4BAB-B6D8-A7FBEBD23043%7D.PDF>.

⁸⁸ TOWN OF LEBANON, BUILD-OUT ANALYSIS AND COST OF COMMUNITY SERVICES STUDY 6 (2007), available at <http://www.lebanontownhall.org/commission.htm?id=k5t1124c>.

⁸⁹ *Id.*

⁹⁰ *Id.* The report states:

Although counterintuitive, development over time may not bring lower taxes. There is an immediate increase in tax revenue, but gradually the demand for increased services, and the need to upgrade infrastructure increases expenditures to an amount that exceeds the increased revenue, and the mill rate must be increased. Even new commercial and industrial development can cause an increase in residential

residential properties are not sufficient to support the cost of services provided to them.”⁹¹ Instead, towns are unfairly using property taxes on farmland to make up the difference, and these very property taxes increase pressure on farmers to sell their land.

A commonly held belief is that adopting the optional property tax abatement for farmland may take away much needed revenue from towns that have a higher percentage of land in agricultural use, thus making it more difficult to provide community services.⁹² However, Cost of Community Services studies across the country have “found that residential development provides less tax revenue than it consumes in public service expenditures.” Specifically, these studies have determined that “farm[land] . . . contribute[s] more to tax revenues than [it] use[s] in public service expenditures, but contribute[s] much smaller proportions of total community tax revenues than does residential development.”⁹³ With statistics like these, it becomes increasingly difficult to find reasons for why municipalities choose not to enact the optional property tax abatements for farmland.

D. *How Local Farmland Classification Disputes Illustrate the Failure of Public Act 490*

One defining feature of PA 490 is that it purports to “encourage the preservation of farm land.”⁹⁴ However, the only definition provided is that farmland consists of any tract of land “constituting a farm unit.”⁹⁵ There are no definitions as to what “farm unit,” “farming,” or “agriculture” consist of, but courts have found that the definition under Section 1-1(q) of the Connecticut General Statutes is sufficient to define “farming” and “agriculture.”⁹⁶ This definition of “farming” and “agriculture” includes,

development, require additional infrastructure, increase traffic, and have other impacts that can contribute to an increased cost of services.

Id. at 5.

⁹¹ *Id.*

⁹² In 2002, Michigan was the only state that had not adopted a use-value property tax assessment for agricultural land. Of particular concern for towns was that they “anticipated that tax burdens of non-agricultural land owners [would] increase more significantly in rural areas as compared to areas with less agricultural land.” PATRICIA E. NORRIS, ET AL., CAN USE VALUE ASSESSMENT FOR PROPERTY TAXATION OF AGRICULTURAL LAND PROTECT ENVIRONMENTAL AMENITIES? 2, 35 (2002), http://www.michigan.gov/documents/deq/deq-og1-MGLPF-farmland_249810_7.pdf.

⁹³ RALPH E. HEIMLICH & WILLIAM D. ANDERSON, DEVELOPMENT AT THE URBAN FRINGE AND BEYOND 29 (2001), available at <http://www.ers.usda.gov/publications/aer803/aer803.pdf>.

⁹⁴ CONN. GEN. STAT. § 12-107a(1) (2011).

⁹⁵ *Id.* § 12-107b(1).

⁹⁶ See, e.g., *Johnson v. Bd. of Tax Review of Fairfield*, 160 Conn. 71, 73–75 (1970) (stating that the term “farm land” is not defined under PA 490 so the court must look to the definitions in Section 1-1 as pertinent to defining the property under the Act); *Gosselin v. Lisbon Bd. of Assessment Apprs.*, No. CV094009784S, 2011 WL 6117893, at *6 (Conn. Super. Ct. Nov. 16, 2011) (holding that in

but is not expressly limited to:

[C]ultivation of the soil, dairying, forestry, raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, including horses, bees, poultry, fur-bearing animals and wildlife, . . . the operation, management, conservation, improvement or maintenance of a farm and its buildings, tools and equipment . . . the production or harvesting of . . . any agricultural commodity . . . [and much more].⁹⁷

The Connecticut General Statutes further define “farm” to include (but is not expressly limited to) “farm buildings . . . or other structures used primarily for the raising and, as an incident to ordinary farming operations, the sale of agricultural or horticultural commodities.”⁹⁸

1. *The Town of Lisbon*

Along with the inconsistent application of the optional property tax abatement for farmland, the lack of a consistent definition across municipalities as to what constitutes farmland is an issue that needs to be remedied. Whether or not property is classified as farmland, and how it is then valued, is left up to the determination of each town’s assessor.⁹⁹ The problem of not having a transparent definition of farmland that can be consistently and uniformly applied by all town assessors can be seen in a case as recent as November 2011, *Gosselin v. Lisbon Board of Assessment*,¹⁰⁰ where the classification of property as farmland was at issue.

In the town of Lisbon, a property had originally been classified as farmland under PA 490 when it was operating as a vineyard.¹⁰¹ The question before the court was whether the property could currently be classified as farmland with its current use of hay production.¹⁰² The court upheld the town assessor’s denial of classification that the property did not qualify under PA 490 as farmland because it was “not a farming operation.”¹⁰³ The court found that the hay cultivation on the property

classifying a property as farm land the town assessor should look to the definition of “farming” according to Connecticut General Statutes Section 1-1(q) as well as the actual use of the property for farming according the factors listed under Section 12-107c).

⁹⁷ CONN. GEN. STAT. § 1-1(q) (2011).

⁹⁸ *Id.*

⁹⁹ CONN. GEN. STAT. § 12-107c(a) (2011).

¹⁰⁰ No. CV094009784S, 2011 WL 6117893 (Conn. Super. Ct. Nov. 16, 2011).

¹⁰¹ *Id.* at *5.

¹⁰² *Id.* at *2–3.

¹⁰³ *Id.* at *5, *7.

satisfied the broad definition of farming under Section 1-1, but that the determining factor should be the actual use of the property for farming under the factors enumerated in Section 12-107c.¹⁰⁴

The court agreed with the town assessor's reasoning and placed importance on the fact that although the owners used equipment for "normal maintenance of the property," they did not attempt to have it classified as farm equipment for tax purposes.¹⁰⁵ The record states that the owners used "a farm tractor, a rotary mower, harrow, sprayer and rake for maintenance of the hayfields."¹⁰⁶ It seems that, contrary to the court's reasoning, the language of Section 12-107c(a) should have been followed—which states that one factor to be considered is "the nature and value of the equipment used in connection [to the farming]."¹⁰⁷ The court found that no hay had been harvested and no income derived from hay harvesting in the past twenty years,¹⁰⁸ even though one witness stated that he had an agreement with the owners to cultivate the hay for use in his own agricultural operations and an employee of the Connecticut Department of Agriculture stated that the land "could be classified as farm land."¹⁰⁹ The court agreed with the assessor's determination that there was not enough evidence of the agreement to cultivate hay for a neighboring agricultural operation and that the Connecticut Department of Agriculture's letter stating that the fields could be classified as farmland was "not binding on the tax assessor."¹¹⁰

The difficulty in carrying out PA 490 becomes obvious when noting how the judge focused on the lack of classifying equipment as "farm equipment," even though the statute says one of the factors an assessor must look at is the nature and use of the equipment, and it does not seem as though the owners would use a farm tractor and harrow, among other equipment, for anything other than the cultivation of hay. The court also dismissed a written letter stating an agreement between the owners and another person that said the hay was cultivated to be used in another agricultural operation, based on a lack of specific evidence.¹¹¹ The problem with this approach is that the factors listed in determining the classification of land as farmland under Section 12-107c are vague and

¹⁰⁴ *Id.* at *6. These factors include "the acreage of such land, the portion thereof in actual use for farming or agricultural operations, the productivity of such land, the gross income derived therefrom, the nature and value of the equipment used in connection therewith, and the extent to which the tracts comprising such land are contiguous." *Id.* at *5 (quoting CONN. GEN. STAT. § 12-107c (2011)).

¹⁰⁵ *Gosselin*, No. CV094009784S, 2011 WL 6117893, at *6.

¹⁰⁶ *Id.* at *2.

¹⁰⁷ CONN. GEN. STAT. § 12-107c(a).

¹⁰⁸ *Gosselin*, No. CV094009784S, 2011 WL 6117893, at *6.

¹⁰⁹ *Id.* at *5.

¹¹⁰ *Id.* at *6—7.

¹¹¹ *Id.* at *7.

non-exclusive, meaning that an assessor can make a determination that there should be another factor to be taken into consideration that is not listed.¹¹²

It seems at odds with the spirit of PA 490¹¹³ that a judge would disregard a letter from the Connecticut Department of Agriculture, which through its Bureau of Agricultural Development and Resource Preservation is responsible for farmland preservation efforts,¹¹⁴ attesting to the fact that the land “could be classified as farm land.”¹¹⁵ The reason the town assessor and the court are able to do this, however, is because the definitions of “agriculture,” “farming” and “farm land” are so varied and can differ based on each municipality’s assessor.

The Connecticut Department of Agriculture has stated that PA 490 is an important preservation tool and the farmland activities that it mentions are so varied as to encompass everything from “raising agriculture or horticultural commodities that range from fur-bearing animals to bees, in addition to the active management of well-known farmland crops such as corn.”¹¹⁶ The reason for this is that “[I]and that is lost to . . . farming is lost [to farming] forever.”¹¹⁷ The Connecticut Department of Agriculture also points out that there is “a fundamental difference between the goals of the municipal tax assessor and PA 490. ‘It’s the assessors’ job to raise revenues for the town. The whole intent of [PA] 490 is to preserve farmland.’”¹¹⁸ Leaving farmland designation to each town’s assessor is troublesome because towns often try to increase their revenues by upwardly reassessing property values. And this is especially true during times of recession.¹¹⁹

¹¹² Although income derived from farmland is a factor to be considered under PA 490 classification, the Connecticut Farm Bureau Association has said that “[w]here no income is derived from land classified as PA 490 farmland does not mean that the farmland classification should be terminated . . . PA 490 land classified as farmland may simply be maintained by a farmer for the owner of the classified land for minimal or no dollars or for some type of barter or service.” CONN. FARM BUREAU ASS’N, *supra* note 40, at 25.

¹¹³ See CONN. GEN. STAT. § 12-107a(1) (stating that “it is in the public interest to encourage the preservation of farm land . . . in order to maintain a readily available source of food and farm products . . . to conserve the state’s natural resources and to provide for the welfare and happiness of the inhabitants of the state”).

¹¹⁴ CONN. DEP’T OF AGRIC., *What We Do*, CTGOV.COM, <http://www.ct.gov/DOAG/cwp/view.asp?a=1366&q=259094> (last visited Aug. 24, 2012).

¹¹⁵ *Gosselin*, No. CV094009784S, 2011 WL 6117893, at *5.

¹¹⁶ Nancy Barnes, *PA 490: Not as Easy as It Looks*, BRANFORDPATCH (Aug. 5, 2011), <http://branford.patch.com/articles/PA-490-not-as-easy-as-it-looks>.

¹¹⁷ *Id.*

¹¹⁸ *Id.* (quoting Ron Olsen, a marketing and inspection representative with the Connecticut Department of Agriculture).

¹¹⁹ *Id.*

2. *The Town of Branford*

Branford has been in a battle for the past few years regarding the classification of a property as farmland under PA 490. The property was originally classified as a single unit of farmland, until the construction of an interstate split up the ten-acre parcel in question from the main farm.¹²⁰ The town assessor made the decision that the land would be considered as two separate parcels, and the parcel in question would no longer be classified as farmland under PA 490.¹²¹ The Board of Selectman was split on the issue, with half believing that the parcel should be considered part of the farm and that it was “a classic textbook example of a farm unit.”¹²²

There is enormous confusion in the town as to what constitutes farmland, with the town assessor stating that the town follows Connecticut state statutes concerning PA 490 designations.¹²³ The town's First Selectman responded that he thought PA 490 was created “to encourage farming” and another Selectman stated that the parcel in question “is not actively farmed and is not an essential, functioning part of the ‘farm unit.’”¹²⁴ One selectman in favor of granting farmland classification noted:

[T]he state statute granting authority for special farm tax status is meant to preserve farmland as open space, whether or not it's being actively farmed, and recognizes that that there is value to retaining even wet or rocky areas and that it does not serve the public interest to tax it at a higher rate.¹²⁵

The town would only gain about \$3,400 a year in extra tax revenue based on the new designation at fair market value, and the court costs could easily exceed \$30,000 to settle the matter in court.¹²⁶ When the Representative Town Meeting (“RTM”) voted to send back the issue to the town Committee, one of the RTM clerks “noted that answers from the Board of Assessors to questions he had posed were what he termed really quite vague. ‘I don't think the town has a policy on 490. We're not

¹²⁰ Mark Zaretsky, *Branford Ruling on Wayne Cooke Farm Tax Dispute Sets off Heated Exchange (Video)*, SHORELINE TIMES (Sept. 22, 2011), <http://www.shorelinetimes.com/articles/2011/09/22/news/doc4e7b494b2d410430623152.txt?viewmode=fullstory>.

¹²¹ Nancy Barnes, *RTM Votes to Send PA 490 Town Policy Deliberations Back to Committee*, BRANFORDPATCH (Sept. 26, 2011), <http://branford.patch.com/articles/rtm-votes-to-send-PA-490-town-policy-deliberations-back-to-committee>.

¹²² Felicia Hunter, *Wayne Cooke Shifts Focus of Farm Tax Status to Red Hill Road Property*, BRANFORDPATCH (Sept. 9, 2011), <http://branford.patch.com/articles/wayne-cooke-shifts-focus-of-farm-tax-status-to-red-hill-road-property>.

¹²³ Barnes, *RTM Votes to Send PA 490 Town Policy Deliberations Back to Committee*, *supra* note 121.

¹²⁴ Zaretsky, *supra* note 120.

¹²⁵ *Id.*

¹²⁶ *Id.*

getting an answer”¹²⁷ The Connecticut Farm Bureau Association (“CFBA”) said “that the town does not need a policy with regard to . . . the farmland . . . components of the land classification . . . [and t]he property either meets the criteria or it does not.”¹²⁸ But this situation makes it painfully obvious that determining whether the property meets the criteria of farmland under Public Act 490 is uncertain.

The declaration of policy under Section 12-107a states that “it is in the public interest to encourage the preservation of farm land . . . in order to maintain a readily available source of food [and also] . . . to conserve the state’s natural resources and to provide for the welfare and happiness of the inhabitants of the state.”¹²⁹ This declaration makes clear that the preservation of farmland, for reasons ranging from production of food to conservation of resources, is the purpose of PA 490. The Connecticut Supreme Court has even upheld the classification of nursery as farmland under the Act, stating:

An examination of this public act clearly indicates that the legislature contemplated more than the mere creation of tax advantages for producers of food products. . . . It is thus clear that [Sections] 12-107a to 12-107e, as derived from Public Act 490, are as much conservation statutes as they are tax relief measures. . . . Indeed, it would appear that the purpose of the tax relief is to aid the conservation effort, and not merely to aid food production itself.¹³⁰

However, Section 12-107c states that factors to be used in assessing whether land qualifies as farmland include “the portion thereof in actual use for farming . . . , the productivity of such land, . . . and the extent to which the tracts comprising such land are contiguous.”¹³¹ It is the consideration of these factors in PA 490 farmland classification that can lead to so many troublesome questions and inconsistent applications across municipalities.

3. *A Lack of Definitions and the Difficulty of Implementing Public Act 490*

The CFBA has noted the problematic nature of these factors: “productivity is a relative term and it can be a deceptive and problematic criteria;” determining the portion of land in actual farming use can be just as difficult since some farms use lands more actively than others; and most

¹²⁷ Barnes, *RTM Votes to Send PA 490 Town Policy Deliberations Back to Committee*, *supra* note 121.

¹²⁸ *Id.*

¹²⁹ CONN. GEN. STAT. § 12-107a(1) (2011).

¹³⁰ *Johnson v. Bd. of Tax Review of Fairfield*, 160 Conn. 71, 73 (1970).

¹³¹ CONN. GEN. STAT. § 12-107c(a) (2011).

importantly, “[i]n Connecticut today, a farm is not always one contiguous parcel” and “[f]armland, under the same ownership, may be non-contiguous and still be considered part of the farm unit.”¹³² But, once again, it is up to each town’s assessor to look at all of the factors in determining farmland status. Although “no single factor should be used as either confirmation or rejection for an application,” they should be used as a whole to determine farmland classification “with consideration for the intent and purpose of PA 490.”¹³³ As seen in the towns of Gosselin, Branford, and Avon, however, this lack of direction and specificity in the Connecticut General Statutes has led to uncertain and differing applications of PA 490, and to local decisions of farmland classifications that often conflict with the true purpose behind PA 490.

For example, although a guide provided by the CFBA notes non-farmable areas that also can make up the farm unit (i.e., forest land and outcroppings),¹³⁴ the town of Branford found that a parcel of land originally included as part of the farmland designation, then separated by the construction of an interstate, was not considered farmland because it did not have actual, current production.¹³⁵ Another case from the town of Avon came to a similar conclusion, when it rejected farmland classification under PA 490 for a wooded area that was not part of the farm unit and completely detached from other parcels.¹³⁶

The problem with statements from the CFBA that non-farmable areas can also make up the farm unit, contradicted by court decisions stating the opposite, is that there is no consistency for municipalities in making a decision as to farmland classification. PA 490 is not “most unambiguous in stating that its purpose relates to the condition of the land as much as it does to the type of products produced thereon,” as the Connecticut Supreme Court has held.¹³⁷ As the CFBA, other organizations, and even Section 1-1(q) of the Connecticut General Statutes have noted, the definition of what farming and agriculture entails is so broad as to perpetuate the inclusion of associated lands in the definition of farmland for the classification and preservation of these lands.¹³⁸

¹³² CONN. FARM BUREAU ASS’N, *supra* note 40, at 11.

¹³³ *Id.* at 10.

¹³⁴ *Id.* at 5.

¹³⁵ *See supra* Part III.D.2.

¹³⁶ *Holloway Bros., Inc. v. Town of Avon*, 26 Conn. Supp. 160 (1965).

¹³⁷ *Johnson v. Bd. of Tax Review of Fairfield*, 160 Conn. 71, 76 (1970).

¹³⁸ *See* CONN. FARM BUREAU ASS’N, *supra* note 40, at 9–12 (addressing the questions “what is farming” and “what is agriculture” in relation to both the definitions provided under PA 490 and Section 1-1(q) of the Connecticut General Statutes, as well as factors that should practically be taken into consideration when determining PA 490 farmland classification); PLANNING FOR AGRICULTURE, *supra* note 83, at 1–2, 18 (This guide by the American Farmland Trust and the Connecticut Conference of Municipalities addresses the broad definitions of farming and agriculture under Section 1-1(q) of the Connecticut General Statutes, as well as addressing the evolving nature of the farm.); *supra* notes 94–

As noted above, however, the ability of municipal assessors to use vague, non-specific factors to disqualify properties for farmland classification (and thus preservation) is an issue. When much of Connecticut's farmland is not made up of contiguous parcels of land, and when a "typical Connecticut farm has only 40% of its acreage in actual production [because] the remainder consists of woodland, wetlands, and stream corridors,"¹³⁹ the viability of these lands to both the farm unit itself and preservation of farmland is crucial. These lands "contribute to environmental quality . . . [and t]he intent of the legislature would not have been served by taxing natural and unused areas within the farm at a higher rate."¹⁴⁰

IV. RECOMMENDATIONS

A. *Initial Changes to Public Act 490*

A number of changes could be made to the Connecticut General Statutes in order to make the implementation of PA 490 consistent with its policy goals of farmland preservation. First, the declaration of policy in Section 12-107a could be clarified consistent with the goal of PA 490 to preserve both commercial agricultural farms and farmland in general.¹⁴¹ This could be helped along with a second change, which would be to define terms under the Act itself to avoid confusion and misapplication. Currently, there is no definition of farming and agriculture under the Act. The only definition provided for under the Act for "farm land" is that it "means any tract or tracts of land, including woodland and wasteland, constituting a farm unit."¹⁴²

When it comes to classification of whether a property is farmland, PA 490 provides a list of factors that the town assessor must take into account in determining classification, including "the portion thereof in actual use for farming or agricultural operations, the productivity of such land, the gross income derived therefrom, . . . and the extent to which the tracts comprising such land are contiguous."¹⁴³ There is not, however, a definition of farming and agriculture. Instead, the town assessor is meant to be guided by Section 1-1(q) of the Connecticut General Statutes, which

98 and accompanying text (detailing the inclusive nature of agricultural and farming definitions in the Connecticut General Statutes).

¹³⁹ *Farmland Facts*, *supra* note 75.

¹⁴⁰ CONN. FARM BUREAU ASS'N, *supra* note 40, at 10 ("Although woodland and wasteland could easily be considered as non-productive to the farm operation, the inclusion of these lands recognized that the vast majority of Connecticut farms contain wetlands, hedgerows, outcrops, stony pastures, and woodlands as part of the landholding.")

¹⁴¹ CONN. GEN. STAT. § 12-107a (2011).

¹⁴² *Id.* § 12-107b(1).

¹⁴³ *Id.* § 12-107c(a).

gives a very broad definition of agriculture and farming.¹⁴⁴ As previously mentioned, the lack of specificity in determining factors gives municipal assessors broad discretion in potentially excluding farmland from classification under PA 490.¹⁴⁵ If towns are to retain the ability for their own assessors to make this determination, there should be more guidelines as to how to evaluate these factors.

For example, it should be stated that the portion of the land in actual farming use should take into the account both the definitions of agriculture and farming under Section 1-1(q), as well as the fact that much of Connecticut's farmland is composed of wetlands and woodlands—and that this should be considered part of the farm unit.¹⁴⁶ The productivity and gross income of the land are also “deceptive and problematic criteria,”¹⁴⁷ since productivity may vary based on market conditions and agricultural management, and income may be nonexistent in cases where farmers barter or exchange services to keep the land in production.¹⁴⁸ More guidance is needed in evaluating these factors of productivity and gross income.

The factor examining “the extent to which the tracts comprising such land are contiguous” is more troublesome. While this factor does not require that all parts of the farm unit be contiguous, towns have misread this provision.¹⁴⁹ Due to the fact that many farms in Connecticut are composed of non-contiguous tracts of land, it should be specified in this factor that it is not a requirement for the land to be contiguous in order to be considered a farm unit and non-contiguous wooded parcels should be considered part of the farm unit, unless it can be proven that they are not incidental to the farming operation.¹⁵⁰

One of the other problems that needs to be addressed is the commitment of municipalities to farmland preservation when those in charge of farmland classification—the town's assessor—are responsible for conflicting goals of both raising revenue by higher land valuations and preserving farmland by classifying it at a lower use value. There need to

¹⁴⁴ *Id.* § 1-1(q); see also CONN. FARM BUREAU ASS'N, *supra* note 40, at 32 (discussing the broad definition of agriculture in the Connecticut General Statutes).

¹⁴⁵ See *supra* Part III.C (discussing the problems associated with individual municipalities evaluating farmland classification under PA 490).

¹⁴⁶ See *supra* notes 139–40 and accompanying text (discussing how up to 60% of a farm unit in Connecticut can be made up of non-farmable land).

¹⁴⁷ CONN. FARM BUREAU ASS'N, *supra* note 40, at 11.

¹⁴⁸ *Id.*

¹⁴⁹ See *supra* note 135 and accompanying text (describing how the town of Avon found a separate and distinct parcel not part of the farm unit); *supra* notes 120–21 and accompanying text (describing how the town of Branford found that a parcel of land that was separated from the main farmland by an interstate was separate and not considered part of the farm unit).

¹⁵⁰ See generally CONN. FARM BUREAU ASS'N, *supra* note 40, at 11–12 (detailing how the factors of Section 12-107c can be elaborated on to better address the classification of farmland).

be incentives for both municipalities and individual owners to preserve farmland, and there are several possible options to achieve this goal. My first recommendation is to eliminate the optional nature of the additional farmland property tax abatement. Instead of giving municipalities the option to abate an additional 50% of property taxes on farmland, this could be made mandatory in PA 490. As the incentive for towns is to increase property taxes, since this is their main source of revenue, they have not taken this optional step of increasing farmland protection by offering additional incentives to owners of farmland.¹⁵¹ The additional 50% abatement in property taxes would mean that farmers who have seen their property taxes increase over the years, even with PA 490, would actually be receiving the tax incentives that PA 490 intends to provide in order to avoid the unnecessary conversion of farmland due to the unaffordability of maintenance.

Another aspect of PA 490 that needs to be addressed is the conveyance tax on farmlands. Currently, there is a 10% conveyance tax on the total sales price of farmland enrolled in PA 490 when it is sold for development.¹⁵² The problem is not only the small penalty, but that the percentage tax decreases over a holding period of ten years until there is no tax whatsoever on the conveyance of farmland for development.¹⁵³ The conveyance tax penalty, coupled with the lower use-value assessment for property tax, is supposed to work to preserve farmland into the future. However, “[a]ny tax incentive is effective as a land use instrument only to the extent that it influences the behavior of the land user or owner. If the benefit to the owner of doing something else is greater than the incentive, the desired effect is lost.”¹⁵⁴

While the lower use-value assessment for property taxes might encourage farmers to hold on to their farmland for longer, the conveyance tax (both with the low starting penalty of 10% and decreasing percentage until it eventually does not even exist as a penalty) does little to incentivize a farmer to preserve his farmland. There is nothing that is binding in PA 490 to keep an individual owner from selling his farmland, and the prices offered by developers outweigh the penalty of any possible conveyance tax that the state might institute. Similar to changing the optional property tax abatement and making it mandatory, PA 490 could change the parameters of the conveyance tax and make it both a higher percentage and consistently the same for every year (not a declining percentage over the years) in order to persuade more individual owners to retain and preserve their farmland. If the benefits of greatly reduced property taxation

¹⁵¹ See *supra* Part III.C.

¹⁵² CONN. GEN. STAT. § 12-504a(c) (2011).

¹⁵³ *Id.*

¹⁵⁴ Libby, *supra* note 9, at 4.

outweigh the high penalty of a conveyance tax, the possibility of preserving more farmland increases.

The preservation of farmland is perhaps the highest priority of PA 490, but as mentioned earlier, the importance of the farming activity itself—particularly agriculture and the ultimate goal of food security—could also be addressed and incentivized as well. Separating agriculture or agricultural uses as a separate subsection of farmland could be helpful, with a stated purpose that is “explicit [in its] intent to preserve farming, not just farmland.”¹⁵⁵ Language that specifically protects working farms and farm businesses and provides additional tax incentives would further aid in this endeavor. The definition of agriculture from Section 1-1(q) of the Connecticut General Statutes is broad enough to provide a basis for a definition of agriculture under PA 490.¹⁵⁶ This all-encompassing definition of agriculture allows for enough flexibility to ensure that it is able “to adapt to future markets and trends.”¹⁵⁷ Furthermore, defining “farm” as any parcel or combination of parcels of land as being under single ownership (or lease) and used for agriculture (as defined above) will ensure that the prevalence of farmers utilizing multiple parcels of land that are non-contiguous will be recognized and will also allow for “future flexibility in farm property use, which is essential to business viability as agricultural markets evolve.”¹⁵⁸ A broad and flexible definition of agriculture also “prevent[s] many denials of the sort where ‘the rules don’t fit.’”¹⁵⁹

Farmland that consists entirely of agriculturally related uses, with the definition being broad enough to encompass incidental uses such as “corn mazes, pick-your-own, . . . and educational demonstrations,” would allow for “flexible uses to supplement farm income and accommodate agricultural trends.”¹⁶⁰ More importantly, this distinction between agriculturally related uses and non-agriculturally related uses would emphasize the importance of incentivizing the preservation of farmland with an ultimate goal of food production and security through agricultural-based uses. One way to implement this could be to take the current optional farmland property tax abatement and change it so that it is applied universally to farmland that is either entirely (or a majority thereof) agriculturally related.

¹⁵⁵ CONN. DEP’T OF AGRIC., AGRIC. VIABILITY GRANT PROGRAM, REGULATING THE FARM: IMPROVING AGRICULTURE’S VIABILITY IN THE CAPITAL REGION 10 (2007) [hereinafter REGULATING THE FARM], available at http://www.farmlandinfo.org/index.cfm?function=article_view&articleID=37701.

¹⁵⁶ CONN. GEN. STAT. § 1-1(q) (2011).

¹⁵⁷ REGULATING THE FARM, *supra* note 155, at 11

¹⁵⁸ *Id.*

¹⁵⁹ PLANNING FOR AGRICULTURE, *supra* note 83, at 8.

¹⁶⁰ *Id.* at 56.

A second option would be to make tax exemptions related to farmland a requirement for municipalities. The Connecticut General Statutes currently allow for a tax exemption up to \$100,000 for farm machinery¹⁶¹ and fully exempts temporary structures related to farming.¹⁶² The General Statutes also permit every municipality the option to approve an additional exemption from property tax of up to \$100,000 for farm machinery¹⁶³ and an exemption up to \$100,000 for any building used for farming or housing of seasonal employees.¹⁶⁴ Instead of having these additional tax exemptions be optional for municipalities, and consequently infrequently implemented, PA 490 could either mandate these farming exemptions or apply them solely to agriculturally related farmlands in order to incentivize food production.

B. Transferable Development Rights: Incentivizing the Preservation of Farmland for Landowners and Municipalities

The Connecticut Farmland Preservation Program, which purchases the development rights to place farmland into a permanent agricultural conservation easement, has failed to adequately preserve farmland in Connecticut.¹⁶⁵ This traditional approach has been hampered by budgetary constraints in federal, state, and municipal funding. In addition to the Connecticut Farmland Preservation Program, there is a Joint State-Town Farmland Preservation Program. This program, which is optional for towns, attempts to stretch state funds further in purchasing the development rights of farmland through a combination of state and municipal funds. The program, however, limits farmland preservation in its requirement that farms have at least thirty acres and a minimum gross annual production of \$10,000.¹⁶⁶ The necessity of a town using its own funds to purchase the development rights—particularly when property taxes frequently fail to finance the town budget and state funding is lacking—makes this program ineffective in dealing with farmland loss in the face of development pressures.

One possible solution for municipalities to competitively deal with the prices developers offer for farmland is a Transfer of Development Rights (“TDR”) program.¹⁶⁷ TDR is a way for communities to preserve farmland in the face of a lack of public funding for programs to purchase outright the

¹⁶¹ CONN. GEN. STAT. § 12-91(a) (2011).

¹⁶² *Id.* § 12-81(73).

¹⁶³ *Id.* § 12-91(b).

¹⁶⁴ *Id.* § 12-91(c).

¹⁶⁵ *See supra* Part II.B (discussing further the failures of the Connecticut Farmland Preservation Program).

¹⁶⁶ CONSERVATION OPTIONS FOR CONNECTICUT FARMLAND, *supra* note 11, at 9.

¹⁶⁷ State law allows for the use of TDR by municipalities. CONN. GEN. STAT. § 8-2(a) (2011).

development rights of farmland. TDR is also a way for towns to deal with the competing interests of developing land (and subsequent increasing property value) and of preserving farmland.¹⁶⁸ The program allows for developers to purchase the development rights from “sending areas” (farmland) and transfer these development rights to “receiving areas” (usually more urban areas that would benefit from further concentrated development). In this way, farmland is preserved and sprawl is curbed as future development is focused in receiving areas that are close to or already contain infrastructure, schools, and other public services.¹⁶⁹ Farmers are incentivized to participate because they are able to “be fully compensated for the development potential of their property” while also maintaining it for income-generating agricultural activities.¹⁷⁰ By relying on the open market and private funds, the town is able to fulfill its goals of farmland preservation “without relying exclusively on tax revenues and other traditional funding sources,” such as the state’s scarce farmland preservation fund.¹⁷¹

The Connecticut General Statutes also allow for the development of inter-municipal TDR Programs, where multiple municipalities can implement a TDR Program across the boundaries of the municipalities.¹⁷² It would seem that a regional, inter-municipal TDR Program would be the most effective in a home rule state such as Connecticut. In this way, municipalities would be able to coordinate the program amongst themselves instead of having it imposed upon them. But as seen with other optional programs left up to municipalities, few have implemented TDR Programs, and no regional TDR Program currently exists.¹⁷³

C. California’s Approach to Farmland Preservation

1. Increasing Incentives and Penalties for the Preservation of Farmland

California offers two approaches to the taxation of farmland that might be useful to Connecticut in terms of increasing incentives and penalties. In 1965, California enacted the Williamson Act with the express purpose of

¹⁶⁸ *TDR Updates*, SMART PRESERVATION, <http://smartpreservation.net/tdr-updates/> (last visited Aug. 24, 2012).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² CONN. GEN. STAT. § 8-2e (2011).

¹⁷³ PLANNING FOR AGRICULTURE, *supra* note 83, at 21; GREEN VALLEY INST., COMMUNITY PLANNING FACT SHEET #7: INNOVATIVE ZONING TECHNIQUES, TRANSFER OF DEVELOPMENT RIGHTS, http://www.greenvalleyinstitute.org/brochures/fact_sheet_7_transfer_of_development_rights.pdf (last visited Sept. 9, 2012) (noting that although TDR Programs are allowed under state statutes, “it has not yet been widely used”).

preserving as much agricultural land as possible in order to ensure food security and prevent urban sprawl that leads to increased costs of providing community services.¹⁷⁴ The Williamson Act allows an owner to enter into a contract with the county, under which the farmland is restricted to the production of commercial food or fiber for a period of ten years in exchange for property tax being calculated on its use value rather than FMV.¹⁷⁵

The State of California realized that due to changing conditions, farmers were not realizing sufficient property tax reductions under the Williamson Act to justify restricting the use of their land to agricultural uses for such a long period. This was due to both the method used to calculate the value of land under the Williamson Act and the passage of Proposition 13 in 1978. In many areas, the rental value of agricultural land often meets or exceeds the FMV of the land, and the landowner will not benefit from entering into a traditional Williamson Act contract. This problem was further exacerbated by Proposition 13, which calculates property taxes on acquisition value rather than FMV.¹⁷⁶ If farmland owners purchased their property many years ago, they often have a factored base year value that is lower than the Williamson Act value.¹⁷⁷ “This is particularly true when dealing with prime row-crop lands with high rental values.”¹⁷⁸

To address this problem, the state enacted the Farmland Security Zone (“FSZ”) legislation.¹⁷⁹ Landowners under the FSZ contract can choose to have their land valued at 65% of either (1) its use value (under the Williamson Act) or (2) its acquisition base price, whichever is lower.¹⁸⁰ In addition, the FSZ legislation requires that the cost of taxes to provide urban-related community services be levied at an unspecified reduced rate on land enrolled on a FSZ contract, unless the tax directly benefits the land itself.¹⁸¹ This is an effort to reduce the gap between what farmlands contribute in tax revenues compared to what it actually costs to provide

¹⁷⁴ CAL. GOV'T CODE § 51220(a) (West 2001) (intending to “preserv[e] a maximum amount of the . . . agricultural land[,] . . . [which] is necessary to . . . the maintenance of [California’s] . . . agricultural economy . . . [and to assure] adequate, healthful and nutritious food for futures residents of this state and nation”).

¹⁷⁵ *The FSZ: Preserving California’s Prime Agricultural Farmland*, CAL. FARM BUREAU FED., <http://www.cfbf.com/issues/landuse/fsz.cfm> (last visited Aug. 24, 2012).

¹⁷⁶ *Id.*

¹⁷⁷ A base year value is the price of the property at the time of acquisition. The base year value is increased by an inflation factor of not more than 2% each year, and this adjusted value is then known as the factored base year value. *Restoring Prop. 13 Base Year Values When the Market Recovers*, CNTY. OF NAPA, <http://www.countyofnapa.org/Pages/DepartmentContent.aspx?id=4294969858> (last visited Jan. 7, 2012).

¹⁷⁸ *The FSZ: Preserving California’s Prime Agricultural Farmland*, *supra* note 175.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

community services to these rural areas.¹⁸² Lastly, farmland must be enrolled in the contract for a period of at least twenty years.¹⁸³ FSZ contracts may be terminated through cancellation, but the county must find that the cancellation is both consistent with the purposes of the Williamson Act and in the public interest.¹⁸⁴ If cancellation is approved, the cancellation fee is 25% of the FMV.¹⁸⁵

The state has instituted a method to encourage participation in the program by reimbursing towns for lost tax revenue due to participation in the program. The Open Space Subvention Act (“OSSA”) was enacted “to provide for the partial replacement of local property tax revenue foregone as a result of participation in the . . . [Williamson Act] and other enforceable open space restriction programs.”¹⁸⁶ Towns receive an annual payment based on the quantity, quality, and for FSZ contracts, proximity to a city, of lands enrolled in these programs. OSSA payments to towns were essentially suspended in 2009, but in 2010 the Senate passed a bill that allowed for a one-time, pro-rata amount of a \$10 million subvention fund for 2010.¹⁸⁷

California has had much more success than Connecticut with its farmland preservation program. As of 2009, half of California’s farmland (approximately thirty million acres) was enrolled in the Williamson Act and fifty-three of fifty-eight counties had adopted the Williamson Act program.¹⁸⁸ So far, twenty-five counties have enacted the FSZ program and enrolled almost 900,000 acres of land in FSZ contracts, which is only around 6% of the statewide Williamson Act enrollment.¹⁸⁹ Due to strict cancellation policies, the average amount of cancelled acreage each year has been less than a thousand acres. And although enrollment is higher in the Williamson Act, the FSZ program has continuously grown since its enactment.¹⁹⁰

¹⁸² See *supra* Part III.C (discussing the disparity between the cost of providing community services to urban areas versus the tax revenue collected from these areas to provide the services).

¹⁸³ *The FSZ: Preserving California’s Prime Agricultural Farmland*, *supra* note 175.

¹⁸⁴ *Id.*

¹⁸⁵ *Williamson Act Program—Open Space Subvention Payments*, STATE OF CAL. DEP’T OF CONSERVATION, http://www.conservation.ca.gov/dlrp/lca/oss/p/Questions_answers.aspx (last visited Sept. 9, 2012).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ CAL. DEP’T OF CONSERVATION, CALIFORNIA LAND CONSERVATION (WILLIAMSON) ACT 2010 STATUS REPORT 2 (2010), available at http://www.conservation.ca.gov/dlrp/lca/stats_reports/Documents/2010%20Williamson%20Act%20Status%20Report.pdf.

¹⁸⁹ *Id.* at 2, 16 (As of 2009, there were approximately fifteen million acres of farmland enrolled in the Williamson Act compared to 863, 619 acres enrolled in a FSZ contract.).

¹⁹⁰ CAL. DEP’T OF CONSERVATION, *supra* note 188, at 2–16 (detailing trends in enrollment for counties across California in both the Williamson Act and FSZ programs).

2. *What Connecticut Can Take Away from California's Approach*

California's legislation differs from Connecticut's in its express purpose of protecting agricultural lands for the purpose of food security and preventing the costs of urban sprawl. The amount of farmland in California is vastly greater than in Connecticut, supporting the conclusion that the definition of farmland should remain as the broad definition of farming and agricultural uses provided for in Section 1-1(q) of the Connecticut General Statutes, and not solely be limited to commercial food or fiber production. With this all-encompassing definition, a greater amount of farmland in Connecticut would be preserved without municipalities having reasons to exclude it from farmland classification. It also aligns better with the use of farmland in Connecticut, where some 60% of the farmland consists of woodlands, wetlands, and stream corridors,¹⁹¹ where the land itself may not be productive as it goes through various agricultural maintenance cycles, and where methods such as bartering and exchange of services can be acceptable forms of income.¹⁹²

Four aspects of California's FSZ legislation could prove valuable to Connecticut. The ever-increasing property taxes in Connecticut, even with PA 490, could be addressed with several of these measures. First, in order to incentivize property owners to participate in the program, they would be given the ability to choose an option that would result in the lowest property valuation for the farmland, based on either actual use or acquisition base price. From there, land would be taxed at 50% of this property valuation. In this way, the optional property tax abatement given to municipalities would be formally instituted in a similar way to the 65% reduction that California provides.

Second, Connecticut could address the problem of the larger share in property taxes rural properties pay in relation to the low cost of providing public services to them. Instead of having property taxes on farmland contribute towards the high cost of providing services to urban communities, Connecticut could also require that the cost of taxes to provide urban-related community services be levied at an unspecified reduced rate on land designated as farmland, unless the tax directly benefitted the land itself.¹⁹³ This would help reduce the property tax burden on farmland owners, and although urban dwellers would be forced to pay their fair share in taxes for services that directly benefit them, towns would not see a decrease in their tax revenue.

Third, the State of Connecticut could make a stronger commitment to

¹⁹¹ WORKING LAND ALLIANCE, *supra* note 2, at 12–13.

¹⁹² CONN. FARM BUREAU ASS'N, *supra* note 40, at 11.

¹⁹³ This unspecified reduced rate might depend on the particular county, and could possibly lead to valuation issues with the cost of specific services and the percentage of each service from which farmland owners benefitted.

farmland preservation and aid municipalities by reimbursing towns for a portion of the lost tax revenue due to participation in the farmland preservation program. The amount that the State of Connecticut could contribute would be dependent on the state's finances for the year and could vary based on yearly budgetary constraints. However, any amount of fiscal aid will be more than the state government is currently providing to local towns to compensate for property tax losses for agriculturally restricted farmland (which is zero). State funding would show a dedication by the State of Connecticut to overall farmland preservation, and would help counties that would otherwise be dedicated to farmland preservation through PA 490, if it were not for the loss in property tax revenue, to better afford to participate in the program.¹⁹⁴

Finally, Connecticut municipalities could follow the FSZ legislation model and require a commitment of the landowner to a twenty-year contract that would restrict the use of the land to agricultural and farming uses only. Incentives for doing this would be the greater return to the landowner in property tax reductions mentioned above. Along with instituting a long-term contract, the conveyance tax that is currently in place could also be reformed.¹⁹⁵ The current system of a declining penalty tax for the sale of farmland for non-agricultural uses is not enough of a deterrent for farmers not to be swayed by the high prices offered by developers.¹⁹⁶ Farmland enrolled in the program should instead be subject to a cancellation policy similar to California's FSZ legislation. The ability to terminate farmland designation should be made more difficult, with the town undertaking a rigorous investigation and only approving termination in cases that are both consistent with the statewide purpose of the farmland protection legislation and are in the public interest—not simply because a better financial offer is made for non-agricultural uses. If the cancellation is approved, the fee should be increased a substantial amount to further decrease incentives to convert farmland. An amount similar to that used in California, 25% of the FMV, could possibly have the same dissuasion effect of farmland conversion due to cancellation.¹⁹⁷

¹⁹⁴ See Alvin Sokolow, *Outlook: Budget Cuts Threaten the Williamson Act, California's Longstanding Farmland Protection Program*, 64 CAL. AGRIC. 118 (2010), available at <http://californiaagriculture.ucanr.org/landingPage.cfm?article=ca.v064n03p118&fulltext=yes> (discussing how although many counties support the farmland protection objective of the Williamson Act, many would not participate if the state did not provide reimbursement for "foregone property-tax revenues").

¹⁹⁵ See CONN. GEN. STAT. § 12-504a(a)(c) (2011) (detailing the conveyance tax on land classified as farmland).

¹⁹⁶ The current conveyance tax starts at 10% of the actual sales price the first year, and declines by 1% over a period of ten years, meaning that after ten years, a farmer is able to sell the land to a developer without any penalty. *Id.* § 12-504a(c).

¹⁹⁷ CAL. DEP'T OF CONSERVATION, *supra* note 188, at 9 (stating that due to the limited nature of conditions that would result in a county approving cancellations, termination of farmland designation

V. FARMLAND LOSS: A LOCAL ISSUE WITH GLOBAL CONSEQUENCES

A. *Combatting Farmland Loss and the Destruction of Natural Carbon Sinks Can Help Reduce the Risks of Climate Change*

There are numerous reasons for protecting farmland, from the interconnectedness of non-farming industries that depend on supplying production inputs to farms¹⁹⁸ to the growing nature of agricultural tourism.¹⁹⁹ “Often overlooked, however, is the role that saving farmland can play in reducing the risks of climate change.”²⁰⁰ The impact of reducing the amount of agricultural land in the United States and replacing it with non-agricultural land has an interconnected effect. Agricultural land serves as what can be called a “carbon sink.” Carbon dioxide is one of the major players when it comes to greenhouse gases, accounting for 50% of total greenhouse gases.²⁰¹ Agricultural land works as a natural carbon sink by sequestering carbon dioxide from the atmosphere. Biomass captures and stores carbon dioxide from the atmosphere,²⁰² which is eventually transferred and stored in the soil below “through crop residues and other organic solids.”²⁰³ Once carbon is stored in the soil, it remains there as long as certain agricultural practices are observed.²⁰⁴

To a certain degree, farmland is able to mitigate the effects of climate change by reducing the amount of greenhouse gases in the atmosphere that contribute to global warming. As greenhouse gas emissions continue to increase,²⁰⁵ it becomes even more important to preserve these natural carbon sinks. The systematic depletion of agricultural land, however, is exacerbating the effects of climate change because “[c]arbon is released when vegetation, trees, and soils are disturbed by burning, removing, or

and the resulting payment of a termination fee has decreased sharply by about 98% to only seven acres in 2008 to 2009).

¹⁹⁸ Jeanne S. White, *Beating Plowshares into Townhomes: The Loss of Farmland and Strategies for Slowing Its Conversion to Nonagricultural Uses*, 28 ENVTL. L. 113, 114 (1998).

¹⁹⁹ “Agricultural tourism is one of the fastest growing segments of Connecticut’s tourism industry, growing about 33 percent annually.” PLANNING FOR AGRICULTURE, *supra* note 83, at 6.

²⁰⁰ *California: Fighting Farmland Loss and Climate Change*, AM. FARMLAND TRUST, <http://www.farmland.org/programs/states/ca/Land-Use-California-Climate.asp> (last visited Dec. 25, 2012).

²⁰¹ Kelly Connelly Garry, *Managing Carbon in a World Economy: The Role of American Agriculture*, 9 GREAT PLAINS NAT. RES. J. 18, 19 (2005).

²⁰² *Id.*

²⁰³ ALAN SUNDERMEIER ET AL., SOIL CARBON SEQUESTRATION—FUNDAMENTALS 1, *available at* <http://ohioline.osu.edu/aex-fact/pdf/0510.pdf>.

²⁰⁴ *Id.* at 2.

²⁰⁵ See U.S. EPA, 2012 DRAFT U.S. GREENHOUSE GAS INVENTORY REPORT, TRENDS IN GREENHOUSE GAS EMISSIONS § 2-1 (2012), *available at* <http://www.epa.gov/climatechange/Downloads/ghgemissions/US-GHG-Inventory-2012-Chapter-2-Trends.pdf> (“Total U.S. emissions [of greenhouse gases] have increased by 10.5 percent from 1990 to 2010.”).

tilling the land.²⁰⁶ So when agricultural land is developed and open land and soil are replaced by concrete, the destruction of these natural carbon sinks means that even more carbon dioxide is released into the air and there is even less land to serve as carbon sinks—all of which contribute to climate change. As a final note, urban sprawl further contributes to carbon emissions by increasing the dependence on automobiles for travel.²⁰⁷

B. *As Climate Change Threatens Food Security Across the Globe, Farmland Protection Plays an Increasingly Important Role in National Food Security*

The warmer temperatures that result from climate change increase the possibility of drought, which directly affects food production. Scientists have become increasingly confident in stating that the extremes in temperatures, which caused droughts in areas from Texas to Moscow in recent years, “were a consequence of global warming.”²⁰⁸ These droughts often have the effect of disrupting local food production, a situation that is

²⁰⁶ Garry, *supra* note 201, at 19.

²⁰⁷ In 1997, Americans drove more than twice as many miles as they did in 1970. Timothy J. Dowling, *Reflections on Urban Sprawl, Smart Growth, and the Fifth Amendment*, 148 U. PA. L. REV. 873, 879 (2000). Over a span of twenty years, from 1990 to 2010, the number of miles Americans drove continued to outpace any growth in population. Vehicle miles traveled increased by 39.2% while the U.S. population increased by 24.1%. See OFFICE OF HIGHWAY POL’Y INFO., U.S. DEP’T OF TRANSPORTATION, U.S. HIGHWAY STATISTICS—VEHICLE MILES TRAVELED, http://www.google.com/publicdata/explore?ds=gb66jodhlsaab_#!ctype=l&strail=false&bcs=d&nselm=h&met_y=VMT&scale_y=lin&ind_y=false&rdim=state&ifdim=state&tdim=true&hl=en_US&dl=en_US&ind=false (last updated June 25, 2012) (Americans drove 2.1444 trillion miles in 1990 and 2.9851 trillion miles in 2010); *U.S. Census Bureau Announces 2010 Census Population Counts—Apportionment Counts Delivered to President*, U.S. CENSUS BUREAU (Dec. 21, 2010), <http://www.census.gov/2010census/news/releases/operations/cb10-cn93.html> (giving the population of the U.S. in 2010 as 308,745,538); U.S. CENSUS BUREAU, 1990 CENSUS OF POPULATION, GENERAL POPULATION CHARACTERISTICS: UNITED STATES (CP1-1) 1, available at <http://www.census.gov/prod/cen1990/cp1/cp-1-1.pdf> (giving the population of the U.S. in 1990 as 248,709,873); see also Howard Frumkin, *Urban Sprawl and Public Health*, 117 PUB. HEALTH REPS. 201, 202—03 (2002), available at http://www.cdc.gov/healthyplaces/articles/Urban_Sprawl_and_Public_Health_PHR.pdf (describing automobile travel as a major contributor to greenhouse gas emissions and correlating increased driving distances with urban sprawl). For a more detailed discussion of the impacts of growth-related issues, impacts and possible solutions to urban sprawl, see HEIMLICH & ANDERSON, *supra* note 93, at 32.

²⁰⁸ JAMES HANSEN ET AL., PERCEPTIONS OF CLIMATE CHANGE: THE NEW CLIMATE DICE 7 (2012), available at http://www.columbia.edu/~jeh1/mailings/2012/20120105_PerceptionsAndDice.pdf. In this article, NASA scientists concluded:

One implication of this shift is that the extreme summer climate anomalies in Texas in 2011, in Moscow in 2010, and in France in 2003 almost certainly would not have occurred in the absence of global warming with its resulting shift of the anomaly distribution. In other words, we can say with a high degree of confidence that these extreme anomalies were a consequence of global warming.

Id.

currently occurring in Texas. Increased temperatures have heightened the evaporation of reservoirs, and this year the Lower Colorado River Authority cut off water for rice farmers in South Texas for the first time in history.²⁰⁹ These same effects were seen in Connecticut in 2005, when drought conditions and an increasing demand for water in a burgeoning college town led to the Fenton River being “pumped dry, causing one of the state’s largest recorded fish kills.”²¹⁰

In 2011, 20% of food in the U.S. was imported, with 35% of fresh produce being imported from other countries.²¹¹ From 1997 to 2011, the volume of fresh fruit, nuts, and vegetables being imported has more than doubled.²¹² An increase in regional droughts in the U.S. would mean that even more food production would be shifted from local producers to producers outside of the U.S. The importation of even more food to satisfy U.S. demand would further increase the total carbon footprint of supplying citizens with food. Most food travels 1,500 to 2,500 miles to get from source to table, which requires more packaging than local foods,²¹³ and the resulting increase in transportation costs uses “four times the [fuel] and generate[s] four times the greenhouse gas emissions of an equivalent diet with ingredients from domestic sources.”²¹⁴ These transportation costs mean that as oil prices continue to rise, so do global food prices.²¹⁵ The price of food rose 8% from December 2011 to March 2012, creating worry that if the forecasted levels of global food production do not materialize, these prices could go even higher.²¹⁶

The ongoing Syrian civil war is instructive of the ultimate costs that climate change can have on a society. The conflict in Syria was preceded by one of the worst long-term droughts and subsequent severe crop failures

²⁰⁹ Colin McDonald, *Climate Change Made the Drought Worse, Scientists Say*, MY SAN ANTONIO (Mar. 5, 2012, 1:14 AM), <http://www.mysanantonio.com/news/environment/article/Droughts-water-woes-expected-to-intensify-3381513.php#ixzz1oSrBeBYw>.

²¹⁰ Scott B. Simpson, *Forging Connecticut’s Water Policy Future: Registered Diversions, Riparian Rights and the Courts After Waterbury v. Washington*, 8 CONN. PUB. INT. L.J. 85, 86 (2009).

²¹¹ *How Much of U.S. Food Is Imported?*, FDAIMPORTS.COM (Sept. 1, 2011), <http://www.fdaimports.com/blog/how-much-of-u-s-food-is-imported/>.

²¹² NORA BROOKS ET AL., U.S.D.A., U.S. FOOD IMPORT PATTERNS, 1998—2007 6 (2009), available at <http://www.ers.usda.gov/publications/fau/2009/08aug/fau125/fau125.pdf>; U.S.D.A., VOLUME OF U.S. FOOD IMPORTS, <http://www.ers.usda.gov/Data/foodimports/> (last updated Apr. 2012).

²¹³ Food packaging makes up nearly one-third of total landfill waste. BRIAN HALWEL, HOME GROWN: THE CASE FOR LOCAL FOOD IN A GLOBAL MARKET 22 (2002), available at <http://www.worldwatch.org/system/files/EWP163.pdf>.

²¹⁴ *Id.* at 6.

²¹⁵ *Global Food Prices Rise on Costlier Oil-World Bank*, REUTERS (Apr. 25, 2012, 2:11 PM), <http://af.reuters.com/article/energyOilNews/idAFL2E8FP40020120425>.

²¹⁶ *Id.*

in history.²¹⁷ A five-year drought led to “nearly 75 percent . . . total crop failure,” resulting in a massive exodus of agriculturally-dependent farmers from the countryside to already strained cities.²¹⁸ Although the roots of Syria’s social unrest extend beyond this agricultural crisis, this drought was one of the driving factors behind it. It is important to note that there is strong evidence that the drought experienced in Syria is linked to climate change. Compounded with a booming population, sprawl, and poor water management, the drought has resulted in roughly one million Syrians becoming “food insecure,” with up to three million facing extreme poverty.²¹⁹ “[I]f current greenhouse rates of greenhouse gas emissions continue, yields of rain-fed crops in the country may decline ‘between 29 and 57 percent from 2010 to 2050,’” even further exacerbating the crisis.²²⁰

The crisis in Syria, along with the above-mentioned problems of increasing dependency on non-U.S. food sources, emphasizes the greater need to become self-sufficient in terms of food production. Farms in Connecticut should be able to “provide a buffer against food price increases and reduced availability to events outside the state,” including disruptions in the food supply of other states and international countries as well.²²¹ While food could be imported from other states, “there is an intuitive belief that complete dependency upon other areas for all of the food consumed in Connecticut places the citizens in a dangerous and costly position.”²²² International events suggest that world food security is in jeopardy due, in large part, to climate change. This development, coupled with an increasing loss of agricultural land in states that the U.S. relies on most for the majority of its regional food production, suggest that a local food supply in Connecticut could very well be “cheaper and more reliable in the long run.”²²³

²¹⁷ Francesco Femia & Caitlin Werrell, *Syria: Climate Change, Drought and Social Unrest*, CTR. FOR CLIMATE & SEC. (Feb. 29, 2012), <http://climateandsecurity.org/2012/02/29/syria-climate-change-drought-and-social-unrest/>.

²¹⁸ *Id.* (quoting Wadid Erian et al., *Drought Vulnerability in the Arab Region: Special Case Study: Syria* 15 (2010), 2011 GLOBAL ASSESSMENT REPORT ON DISASTER RISK REDUCTION, available at http://www.preventionweb.net/english/hyogo/gar/2011/en/bgdocs/Erian_Katlan_&_Babah_2010.pdf).

²¹⁹ *Id.*

²²⁰ *Id.* (quoting Clemens Breisinger et al., *Global and Local Economic Impacts of Climate Change in Syria and Options for Adaptation* 16 (Int’l Food Pol’y Research Inst., Discussion Paper No. 01091, 2011), available at <http://www.ifpri.org/sites/default/files/publications/ifpridp01091.pdf>).

²²¹ WORKING LAND ALLIANCE, *supra* note 2, at 14.

²²² IRVING F. FELLOWS & PATRICK H. CODY, A FOOD PRODUCTION PLAN FOR CONNECTICUT, 1980–2000: A GUIDE TO THE PURCHASE OF DEVELOPMENT RIGHTS ON FARMLAND 2 (1980), available at <http://www.workinglandsalliance.org/>.

²²³ WORKING LAND ALLIANCE, *supra* note 2, at 14.

VI. CONCLUSION

In PA 490, Connecticut has made an initial preservation attempt by stating the need to preserve farmland for food security, natural resources, and the welfare of its citizens. However, the challenges of farmland preservation in Connecticut persist. Implementation of the state's farmland policy is both inconsistent and uneven as municipalities are left in control of implementing farmland conservation policies. Farmland loss continues, and will continue as long as the unclear standards of farmland classification and optional property tax abatements and exemptions continue. Clearer definitions as to what the state wants to consider farmland for preservation purposes under PA 490 and increasing the incentives for owners of farmland to participate, as well as the penalties for conversion, would all be ways to combat these challenges and help strengthen the overall preservation farmland in Connecticut. California provides one example as to how a strong and solid state system of farmland property taxation can help to preserve a state's farmland.

While focusing on Connecticut, it is important to keep in mind that farmland loss is not just a local problem but one with global implications. In today's world, climate change cannot properly be evaluated without looking at the effects of farmland loss. Farmland preservation plays a vital role in mitigating climate change—from serving as natural carbon sinks to preventing the fragmentation of landscapes that leads to species loss. The interconnected effects of climate change and farmland loss on food production is being seen in events as far-reaching as Syria and as close to home as the Fenton River in Connecticut. Through the recommended changes to PA 490, Connecticut can encourage farmland preservation in a way that actually works to fulfill its declaration of policy: “to maintain a readily available source of food and farm products . . . to conserve the state's natural resources and to provide for the welfare and happiness of the inhabitants of the state.”²²⁴

²²⁴ CONN. GEN. STAT. § 12-107a(1).