CHANGING TIMES: SHIFTING RURAL LANDSCAPES

*By Mark B. Lapping and Sandra L. Guay**

INTRODUCTION

As a college student Jacqueline Kennedy studied the work of Robert Frost. Later she convinced her husband that the great Yankee poet would make a fine contribution to his inauguration as President in 1961.[1] Frost accepted the invitation and wrote a special poem for the occasion. When it came time to deliver it, the 86 year-old poet was blinded by the sun as it reflected off the snowfall that hit the nation's capital the day before. He could not read the poem he wrote for this occasion and, instead, improvised and recited from memory a poem that he wrote in 1936, "The Gift Outright."[2] The opening lines of the short poem foretell its course:

> The land was ours before we were the land's.
> She was our land more than a hundred years
> Before we were her people.[3]

While we came to possess the land, it was not until we truly settled it and gave ourselves to the land in pure "surrender" to it that our relationship to the land was American and not European. Had the poem concluded at

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1. POETRY AND POWER: ROBERT FROST'S INAUGURAL READING, http://www.poets.org/viewmedia.php/prmMID/20540 (last visited Sept. 20, 2013).
2. *Id.*
3. Robert Frost, *The Gift Outright*, THE POETRY FOUNDATION, http://www.poetryfoundation.org/poem/237942 (last visited Oct. 5, 2013).

this point it would have been one about American triumphalism, pure and simple, and certainly something fitting for a presidential inauguration in a country of constant self-congratulation and asserted exceptionalism. But Frost did not stop at that point, and instead inserted a line, set-off by parentheses, that changed it all,"(The deed of gift was many deeds of war)." The literary historian Albert J. Von Frank points out that this somewhat obscure legal term—the "deed of gift"—came to Frost from his close reading of Marlowe's "Doctor Faustus" wherein Mephistopheles tells the good Doctor that he must bequeath his soul to the Devil through a deed of gift.[4] In very little text Frost's sonnet reminds us that the "gift" came at great cost, human and ecological. In more contemporary times perhaps only Wendell Berry, the agrarian essayist and poet, captures much the same intensity and ambiguity of our on-going relationship to the land as did Frost.[5] Land is promise, commodity, fertility, collateral, inheritance, identity, investment, retirement account, and the very "room and situation" of our lives, as economist Jim Hite has called it.[6] And, of course, it is all of these things and more, for as conservationist Peter Forbes has written, "land is life."[7] The "gift" continues to define us in many ways and the "deeds of war," particularly against nature and many of our people, continues apace.

For the greatest part of our national history, the United States has been rural in both its population and its landmass. While somewhat less than twenty percent of all Americans currently live in rural areas and small towns, that population is spread across approximately ninety percent of the country's landmass.[8] The rural sector is, then, dispersed very sparsely across vast areas and in many different types of settlements and communities in the open country, on the fringes of expanding metropolitan areas, and in every region of the nation.[9] While it is dangerous to generalize about such a diverse and heterodox landscape, this paper will attempt to describe the national rural land base and then discuss in greater detail that part of this

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4. Albert J. Von Frank, *"On 'the Gift Outright,'"* MODERN AMERICAN POETRY, http://www.english.illinois.edu/maps/poets/a_f/frost/gift.htm (last visited Sept. 21, 2013).

5. WENDELL BERRY, THE GIFT OF GOOD LAND: FURTHER ESSAYS CULTURAL AND AGRICULTURAL, (1981).

6. JAMES C. HITE, ROOM & SITUATION: THE POLITICAL ECONOMY OF LAND-USE POLICY, at 7 (1979).

7. PETER FORBES, THE GREAT REMEMBERING: FURTHER THOUGHTS ON LAND, SOUL, AND SOCIETY 2 (2001).

8. *Rural Population (% of Total Population) in the United States*, TRADING ECONOMICS, http://www.tradingeconomics.com/united-states/rural-population-percent-of-total-population-wb-data.html (last visited Sept. 20, 2013); Stefani Cox, *The Color of Elsewhere: Identity and Wealth in Rural America*, THE URBAN FRINGE (Apr. 15, 2013), http://ced.berkeley.edu/bpj/2013/04/the-color-of-elsewhere-identity-and-wealth-in-rural-america/.

9. *See* Mark B. Lapping, *Where Problems Persist One Sixth of the Nation is Rural and Many Rural Residents Are Needy*, PLANNING, Oct. 2007.

rural landscape in which we presently find ourselves, northern New England.

I. THE NATIONAL LANDSCAPE

The United States Department of Agriculture (USDA) has been the major federal agency historically charged with the responsibility for keeping records and statistics on land use across the nation.[10] Its most recently released report, *Major Land Uses, 2007* provides data on the significant land uses according to 2007 data.[11] It found that, of the approximately 2.3 billion acres of land in the county, urban land uses accounted for only three percent of the total American land mass. Rural lands, on the other hand, which consist of forest lands, grass lands and range, cropland and special use areas (wilderness, wildlife preserves, national and state parks and reserves, and other uses) accounted for nearly all of the remaining land in the country, or more than ninety percent of the American landscape.[12] Forested lands constitute twenty-eight percent of the total, and grasslands, pasture, range, and croplands (what we tend to think of as "agricultural lands") together constitute forty-six percent of the total American land base. The USDA describes another thirteen percent as "special lands," which includes numerous types of uses from wilderness areas to defense and military bases.[13] Alaska alone constitutes nearly fifty percent of this category. And finally, another thirteen percent of the land is categorized as "miscellaneous" land uses and is composed of wetlands, desert, tundra, and other "barren" lands, as well as rural residential land uses.[14]

Within this land use typology, there are numerous variables that make land categorization a complex and a highly nuanced process. For example, the definition of cropland includes land actually planted in crops, like corn or soybeans; farmland used as pasture; and "idled" farmland enrolled in conservation programs like the Cropland Reserve Program ("CRP").[15] The distinction between some of these lands and those defined as "grassland"

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10. *Major Land Uses, Overview*, USDA ECON. RESEARCH SERVICE, http://www.ers.usda.gov/data-products/major-land-uses.aspx (last visited Sept. 20, 2013).

11. CYNTHIA NICKERSON ET AL., USDA, MAJOR USES OF LAND IN THE UNITED STATES, 2007, at 5 (2011).

12. *Id.* at v.

13. *Id.* at 34.

14. *Id.* at 36.

15. Doug O'Brien, *Summary and Evolution of U.S. Farm Bill Conservation Titles Expanded Discussions*, NAT'L AGRIC. LAW CTR, http://nationalaglawcenter.org/farmbills/conservation/ (last visited Nov. 8, 2013).

that was formerly cropland and that currently has been pastured, for example, can be a fine one. Nationally cropland declined between 2002 and 2007 by 34 million acres—resulting in the lowest level of cropland since 1945—with the vast majority of the decrease explained by an increase in grassland. Some of this decrease may be understood through cycles of drought and ways in which farmers have adapted to climatic change. However, a change in the methodology used for land use categorization helps explain this statistical variation.[16] Thus, it becomes difficult to compare land uses over time because of the growing sophistication of methodological tools utilized to delineate land use, such as GIS mapping programs and ever more accurate satellite imagery.

Keeping this in mind, it is still possible to see some remarkable differences between rural regions of the United States when it comes to how land is utilized. For example, in the "Northeastern" region—which includes all of the New England states and most of the Middle Atlantic states—cropland accounted for twelve percent of the land, while in the historical "Corn Belt"—Iowa, Missouri, Illinois, Indiana and Ohio—over half of all land, or fifty-four percent, was devoted to crops. As one might imagine, the Northeast is heavily forested compared to the Com Belt states and when we turn attention to northern New England, we are speaking about the most heavily forested states in the country. Along with the "Southeast," which the USDA defines as including the states of Georgia, Alabama, South Carolina, and Florida, the Northeast is also the most urbanized region in the nation. Thus, the Northeast combines significant forested lands and highly urbanized lands in a very interesting environmental contrast.

Within these national land classifications, there are important variations. Local or micro-level changes and influences can create subtle but truly significant developments "on the ground." For example, in Kansas a transition from wheat production to the growing of soy and corn is taking place. While this is a shift within the broad category of "cropland," the subtle but significant change that is occurring is between a dry land farming system to one that requires significant irrigation, and, this in a region which is already witnessing a profound scarcity of available water from its one dominant source, the Ogallala Aquifer. It appears that federal policy that stimulates the production of certain fuel crops for ethanol production is one of the key reasons behind this change. Perhaps this is indicative of the problem of the "unintended consequences of policy," which in addition to a shifting away from wheat production, has contributed to the rising cost of a

16. NICKERSON ET AL., *supra* note 11, at 6.

bushel of corn from as low as $2 in 2005, to $7.50 in 2011.[17] Still, without getting inside the definitions employed by the USDA and other natural resource agencies, small but highly important land use changes might well be masked and go unrecognized. In a somewhat related situation, but one that the USDA land use classification scheme should eventually pick-up, there is a shift from grassland to corn and soy cropland in the western Corn Belt states.[18] Here the problem is that highly erodible grasslands subject to soil loss and seasonal drought are moving into corn and soy cropland production, again, for ethanol.[19] The larger point is, that in land use policy making and planning, "the devil" is truly in the details.

Other important regional variations in rural land use are likewise detectable and indicate what is happening across the rural landscape. In a recent front-page story in its business section, the *New York Times* reported how Texas cattle ranchers have to adjust their modes of production as well as the number of animals they raise due to the deep drought the region is enduring.[20] In time, this could mean a substantial change in what Texas looks like and how its rural lands contribute to its settlement patterns. Indeed, the availability of water, or the lack thereof, is coming to be one of the major drivers in land use change across much of rural America. A number of states in the nation's heartland are facing long-term, severe, and even "exceptional" drought conditions, which could well reshape both agricultural production and community survival. Parts of at least 7 states—Oklahoma, Wyoming, South Dakota, Colorado, Kansas, New Mexico, and Nebraska—have been identified by the USDA as literally "running out of water."[21] A recent front-page story in the *New York Times*, "Well Dry,

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17. James M. Griffin & Mauricio Cifuentes Soto, *U.S. Ethanol Policy: The Unintended Consequences*, 3, THE TAKEAWAY 2 (2012) (discussing the increasing cost of corn).

18. *See* Christopher K. Wright & Michael C. Wimberly, *Recent Land Use Change in the Western Corn Belt Threatens Grasslands and Wetlands*, 110 PROCEEDINGS OF THE NAT'L ACAD. OF SCI., 4134, 4134 (Mar. 5, 2013) (discussing grassland conversion and the expansion of corn and soy into areas with high erosion risks and vulnerability to droughts).

19. *See* RUBEN N. LUBOWSKI, ET AL., ENVIRONMENTAL EFFECTS OF AGRICULTURAL LAND-USE CHANGE: THE ROLE OF ECONOMICS AND POLICY, USDA, ECON. RES. SERV..2006 (examining agricultural land-use changes, productivity, and environmental sensitivity).

20. Stephanie Strom, *A Stubborn Drought Tests Texas Ranchers*, N.Y. TIMES, Apr. 5, 2013, *available at* http://www.nytimes.com/2013/04/06/business/a-long-drought-tests-texas-cattle-ranchers-patience-and-creativity.html (last visited Nov. 8, 2013).

21. Alexander M. Hess, et al., *The Seven States Running Out of Water*, 24/7 WALL ST (March 21, 2013, 11:32 AM), http://247wallst.com/special-report/2013/03/21/the-seven-states-running-out-of-water/.

Fertile Plains Turn to Dust," documents further the on-going problems of providing enough water to agriculture in the Plains States.[22]

Not coincidentally, many of these prairie areas and Great Plains states are the subject of one of the more radical land use proposals that has appeared over the past generation, the "Buffalo Commons" scheme initially put forward by Deborah and Frank Popper.[23] Looking at the long sweep of Great Plains history and especially its demography, the Poppers saw the emptying out of the region and its many communities. The Poppers essentially proposed that the persistence of out migration, a rapidly graying of remaining residents, and the decline in the capacity of local communities to provide necessary services and supports, were combining to hollow out this overwhelmingly rural region. The Poppers recommended that public policy should be directed to turning the region back into the great grassland habitat it was during the time when buffalo roamed the Plains and Native American groups followed the migration of the animals upon which they came to depend. Though initially attacked by local citizens and their government representatives and organizational leaders, it has been very difficult to argue against the future the Poppers foresaw. This is a vast region that contains a good many ghost towns, and the demographic trends appear to be conspiring against an alternative. Granted, some places of the Great Plains are witnessing growth, such as the "oil rush" population infusion in the "Bakkan" region of western North Dakota and easternmost Montana, but this is the anomaly and is due to the exploitation of new energy resources, which tend to make such places ultimately vulnerable and prone to many of the problems associated with "boom and bust" cycle economies.[24] Other policy proposals, such as the "small town triage" approach that sought to focus investment and development in growth-pole communities, or service centers, which would anchor larger rural hinterland areas, were also put forward during this period.[25]

Water shortages may also alter the tempo and pace of urbanization, and with that, the conversion of rural land into more urban uses. This is not only an issue in those places that are chronically drought-plagued areas, such as

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22. Michael Wines, *Wells Dry, Fertile Plains Turn to Dust*, N.Y. TIMES, May 19, 2013, *available at* http://www.nytimes.com/2013/05/20/us/high-plains-aquifer-dwindles-hurting-farmers.html (last visited Nov. 8, 2013).

23 Deborah Epstein Popper & Frank J. Popper, *The Great Plains: From Dust to Dust, A Daring Proposal for Dealing with an Inevitable Disaster*, PLANNING MAGAZINE (Dec. 1987).

24. *See* Ed Kemmick, *The Bakken Boom*, Oil Rush Keeps Many UM Alums Hard at Work MONTANAN (Spring 2012), *available at* http://www2.umt.edu/montanan/s12/The%20Bakken%20Boom.asp (emphasizing the boom and bust nature of Bakken Shale in Montana).

25. Thomas L. Daniels & Mark B. Lapping, *Small Town Triage: a Rural Settlement Policy for the American Midwest*, 3 J. OF RURAL STUDIES, 273, 273–280 (1987).

in the Klamath River Basin in southern Oregon, where for almost fifty years, one group of farmers and ranchers have been battling other farmer/ranchers, environmentalists, and the Klamath Indian Tribes for access to water for irrigation.[26] Indeed, even the burgeoning Southeast has started to witness substantial water shortages, and the federal courts have been the stage for water resources fights between several southern states, all witnessing significant population growth and metropolitan expansion. Of note, on June 13, 2013, the U.S. Supreme Court issued its decision in *Tarrant Regional Water District v. Herrmann* bringing to closure a long running dispute over water rights between the states of Oklahoma and Texas.[27] *Tarrant* involves an interpretation of the 1980 Red River Compact, a congressionally sanctioned agreement that apportions water from the Red River Basin between Arkansas, Louisiana, Texas, and Oklahoma. Specifically, while Oklahoma argued that under the Compact each state is entitled to take up to twenty-five percent of excess water located within that state's border, water-starved Texas claimed that the Compact authorized cross-state extraction of the excess water. Relying on its own interpretation, Oklahoma enacted laws that specifically prohibit such cross-state extraction from the portion of the Red River Basin within its borders. Initially claiming that Oklahoma's statutes violated the Commerce Clause, as it prevented unallocated water from being distributed cross-border, Texas later amended its complaint to also claim that the legislative action taken by Oklahoma to prevent cross-border access was a violation of the Compact itself.

The Supreme Court denied both of the Texas claims. On the question of state sovereignty, the Court determined that whereas disputes involving interstate compacts are determined under contract law principals,[28] the intention of the parties to the Compact should control.

In considering the parties' intentions, the Court determined there were three reasons why the Compact did not create cross-border rights. First, the Red River Compact is silent with respect to cross-border diversions or a methodology by which to allocate cross-border distributions, and "[s]tates rarely relinquish their sovereign powers, so when they do we would expect a clear indication of such devolution, not inscrutable silence."[29] Second, similar cross-border water rights compacts have specific language addressing allocation of diversions, and to require such allocation without

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26. Jeff Barnard, *Klamath Tribes and Feds Exercise Water Rights*, YAHOO! NEWS (June 10, 2013, 9:27 PM), http://news.yahoo.com/klamath-tribes-feds-exercise-water-rights-222626342.html.

27. Tarrant Regional Water District v. Herrmann, 133 S. Ct. 2120, 2122 (2013).

28. *Id.* at 2130.

29. *Id.* at 2133.

such specific guidance "would be a jurisdictional and administrative quagmire."[30] Third, the Court found that the parties' course of performance under the compact, specifically that Texas had earlier offered to purchase the water from Oklahoma, negated Texas' present claim that under the terms of the Compact it was entitled to the cross-border allocation without payment. With respect to the violation of Commerce Clause claim made by Texas, the Court found that there was no violation, as there was no "unallocated water" under the terms of the Compact.

Tarrant is both a lesson in contract drafting and negotiation, as well as a reminder that "sovereign States possess an 'absolute right to all their navigable waters and the soils under them for their own common use,"[31] and that the Court will recognize a strong presumption in a state's sacrosanct title in navigable water.

Perhaps one of the more unusual manifestations of the battle for interstate water rights is a recent resolution passed in the Senate of Georgia, following the passage of a similar resolution by the Georgia House of Representatives, calling for a change in the state's boundary line with Tennessee.[32] Claiming that a two hundred year old border dispute must be redressed through a slight alteration of its northern border, Georgia is seeking to bring a very small portion of the Tennessee River under its jurisdiction, so as to allow it to tap the river's waters for the growing north Georgia region that includes parts of Metro Atlanta.[33] If an agreement with Tennessee cannot be amicably reached, the legislature directs the Georgia Attorney General to sue Tennessee in the federal courts.[34] In this region, then, rural waters and lands are seen as key to the future growth of a major metropolitan area.

Other even more subtle changes are occurring in the broad categories the USDA lays out that require some comment. For example, a recently released U.S. Forest Service report indicates that with changes in the climate, tree species composition in northern Wisconsin, the geographic area of the research study, is beginning to change. Along with this, both wildlife and fisheries habitat will also be altered, and a local economy based on timber harvesting, hunting and fishing, and tourism may also be affected. As the study concludes:

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30. *Id.* at 2134.

31. *Id.* at 2123 (citing Martin v. Lessee of Waddell, 16 Pet. 367, 410, 10 L.Ed. 997 (1842)).

32. Dave Williams, *Georgia Senate Passes Tennessee River Resolution*, ATLANTA BUSINESS CHRONICLE (Mar. 23, 2013, 2:13 PM) *available at* http://www.bizjournals.com/atlanta/news/2013/03/25/georgia-senate-passes-tennessee-river.html.

33. *Id.*

34. H.R. 4, 152nd Gen. Assemb., Reg. Sess. (Ga. 2013).

> "forest managers in northern Wisconsin need to establish clear goals for adaptation, mitigation, and monitoring and make sure these are articulated and integrated. Ecological, social, and economic goals will need to be weighed, and mitigation will have to be balanced with adaptation"[35]

New Englanders have been warned that with climate change they stand to lose the region's maple syrup industry due to increases in temperature and changes in rainfall amounts. It has been estimated that if the northeast climate warms as now projected, the U.S. maple industry "will become economically untenable during the next 50-100 years."[36] In terms of species composition in the northeast, it is expected that warming temperatures in the ensuing 50-100 years will alter the present northern hardwood dominated forests in a manner that will have "profound implications on the character and economy of New England and New York."[37]

Yet, another recently released U.S. Forest Service study suggests that there is "no consistent pattern of climate-related species movement in either elevation or latitude" in the White Mountains of New Hampshire and adjacent lands in Maine other than that brought about by "natural succession."[38] Some emerging evidence strongly suggests that changes in fisheries, wildlife,[39] and bird habitats have already taken place and will likely increase over time due to changes in the climate.[40] What we can discern from this is the climate science is rather young in its sophistication but that, again, changes within rural land use categories may be as significant as changes between them. This information, however, can only be obtained through local studies and analysis.

As a USDA report concludes, "many factors impact land uses, including policy, socioeconomic, and environmental factors. Identifying

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35. LESLIE BRANDT, ET AL., USDA, U.S. FOREST SERV., N. RESEARCH STATION, CLIMATE CHANGE SCIENCE APPLICATIONS AND NEEDS IN FOREST ECOSYSTEM MANAGEMENT 37 (2012).

36. *Global Warming Mountaintop 'Summit': Economic Impacts on New England Before the H. Select Comm. on Energy Independence and Global Warming*, 9 (June 4, 2007) (statement of Timothy D. Perkins, Ph.D., Director, University of Vermont Proctor Maple Research Center).

37. *Id.*

38. WILLIAM B. LEAK & MARIKO YAMASAKI, USDA, U.S. FOREST SERV., N. RESEARCH STATION, TREE SPECIES MIGRATION STUDIES IN THE WHITE MOUNTAINS OF NEW HAMPSHIRE 8 (2011).

39. LINDSEY RUSTAD ET AL., USDA, U.S. FOREST SERV., N. RESEARCH STATION, CHANGING CLIMATE, CHANGING FORESTS: THE IMPACTS OF CLIMATE CHANGE ON FORESTS OF THE NORTHEASTERN UNITED STATES AND EASTERN CANADA, 2, 10, 15, 17–19, 27–35 (2012).

40. Bill Trotter, *Scientists: Climate Change Pushing Chickadee, Maine's Official Bird, Toward Canada*, BANGOR DAILY NEWS (June 24, 2013, 7:71 PM), https://bangordailynews.com/2013/06/24/news/state/scientists-climate-change-pushing-chickadee-maines-official-bird-toward-canada/print/.

which factors make the most significant impact is challenging because data are not always available at the same spatial or temporal scale."[41]

In addition to land use information, the USDA study also provides some data on land ownership and tenure. By far the largest percentage of American land, fully sixty percent, is privately owned. The remainder is owned by various governmental entities, with federal ownerships accounting for almost thirty percent of the total, and the remainder in state or local ownerships.

Federal land ownership is hardly uniform across the nation. Such lands vary from approximately three percent in Connecticut to slightly more than eighty percent in Nevada.[42] Indeed, federal ownerships are especially concentrated in the West, and for a long time these lands have been the target of the "sagebrush rebellion" that continues to push for the transfer of ownership either to state governments or the private sector.[43] As one might imagine, how federal resource agencies manage and regulate land uses on federal lands in the American West has a profound impact on local rural economies and communities. Issues over grazing rights, timber sales, forest fire suppression, and water allocation are often seen as "life or death" decisions for rural Westerners.

As with the land use categories themselves, the definitions of ownership or tenure types are broadly defined and are also subject to nuance. Land tenure is often a difficult issue to raise in the United States because we are so wedded to the notion that the marketplace is the final and most appropriate mechanism to affix property rights and obligations. Concerns over how land is used will invariably raise the matter of who ought to own the land and how lands owned by the public should be managed. Private ownerships range from corporate to individually owned parcels, and much in between. Some family farms are actually owned by family corporations, while the majority are still single proprietorships. In some jurisdictions, controls have been placed on the amount of land that corporations can control. Recently, the Governor of Kansas has sought to loosen restrictions on just how much land a corporation may own in his state. While the issue has been put aside for further study, it has split major farm organizations, some of which see greater corporate control of the land

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41. NICKERSON ET AL., *supra* note 11, at 41.

42. ROSS W. GORTE ET AL., CONG. RESEARCH SERV., R42346, FEDERAL LAND OWNERSHIP: OVERVIEW AND DATA 3 (2012).

43. *E.g.*, WILLIAM L. GRAF, WILDERNESS PRESERVATION AND THE SAGEBRUSH REBELLIONS 15 (1990) (highlighting the federal government's role in administering wilderness lands in the American West).

as dangerous for agriculture.[44] The federal government also monitors foreign ownership of agricultural land through the Agricultural Foreign Investment Disclosure Act ("AFIDA") of 1978.[45]

Currently, there is little concern over foreign ownership of agricultural land in the United States. Having said this, growing international unease over "land grabs" may well make this an issue in the future, as pressure continues to mount on the world's ability to provide food security for an ever-growing population.[46]

One of the more interesting developments in American land tenure that has evolved over the past several decades has been the rise of land trusts, organizations like the Vermont Land Trust. Such entities have gained traction across the country, and it is now estimated that in combination with local governmental purchases of conservation easements, approximately 5 million acres of active farm and ranch lands have been protected from development through trusts.[47]

II. NORTHERN NEW ENGLAND

More than one wise wag has suggested that had the United States been settled from the West to the East, as opposed to the way it was, New England would have remained a wilderness area. Compared to other sections of the nation, this region's lack of easily exploitable natural resources would have made it largely unattractive to settlers and development. If this were the case for New England as a whole, it is even more so with the northern New England states of Vermont, New Hampshire, and Maine. Indeed, much of the land use story of the last century or so in northern New England has been the return of the land to the forest. Though the "hill farms" went first, agriculture in general has been a declining land use from a time, not that long ago, when it shaped both the landscape and community life throughout the region. Currently Maine is approximately ninety percent forest covered, and it is followed very closely by New Hampshire at better than eight-four percent forest covered. Vermont is more than eighty percent in forestland use, an environmental

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44. Scott Rothschild, *Legislature Sends Proposals to Repeal Corporate Farm Limits to Further Study*, LAWERENCE JOURNAL-WORLD (Mar. 22, 2013), http://www2.ljworld.com/news/2013/mar/22/legislature-sends-proposals-repeal-corporate-farm-/.

45. 7 U.S.C. § 3501 (2012).

46. Saturnino M. Borras, Jr. et al., *Towards a Better Understanding of Global Land Grabbing: An Editorial Introduction* 38 J. OF PEASANT STUDIES, 209–10 (2011).

47. American Farmland Trust, *3 Million Acres of US Farmland Protected by Land Trusts*, W. FARM PRESS (April 2, 2013, 1:36 PM), http://westernfarmpress.com/management/3-million-acres-us-farmland-protected-land-trusts.

juxtaposition from its situation over a century ago when it was eighty percent cleared for farming. Taken together, northern New England is the single most heavily forested region in the nation.[48]

While the second most forested state in New England, New Hampshire has witnessed a decline of approximately 125,000 acres in its forestland base over the past several decades. Its forested area currently approximates what existed in the late 1940s.[49] As with New Hampshire farmland, which has also declined in amount, the reduction in forestlands is largely due to the growth in population that the state has witnessed. For the last four decades or so, New Hampshire's population has grown at a rate greater than any other New England or northeastern state. Indeed at approximately 1.2 million people, New Hampshire's population has essentially doubled since 1960, and much of this growth has taken place on previously farmed and forested lands.[50] The state still maintains a substantial publicly owned forest of 1 million acres, much of it in the White Mountains National Forest ("WMNF").[51]

The year of 2011-12 marked the centennial of the passage of the Weeks Act by the U.S. Congress.[52] Its importance to the New Hampshire forest, and later to Vermont's as well, cannot be discounted. Named after a Massachusetts congressman, John Weeks, who long championed the cause of forest conservation and public land ownership, the Weeks Act provided funding and authorized the federal purchase of forestlands for the creation of national forests east of the Mississippi.[53] The WMNF was one of the first national forests to be created in this way. It is no exaggeration to say that New Hampshire was the epicenter of forestland conservation in the eastern United States. Concern over the rapacious over-cutting of forestlands, forest fires, and soil erosion also led to the establishment of the Society for the Protection of the New Hampshire Forest several years prior to the passage of the Weeks Act. Along with other individuals and groups, the Society

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48. Colin Nickerson, *New England Sees a Return of Forests, Wildlife*, BOSTON GLOBE (Aug. 31, 2013), *available at* http://www.bostonglobe.com/metro/2013/08/31/new-england-sees-return-forests-and-wildlife/IJRxacvGcIIcQDmtZt09WvN/story.html?s_campaign=sm_tw.

49. N.H. DIV.OF FORESTS AND LANDS, USDA, U.S. FOREST SERVICE, N. RESEARCH STATION, THE GRANITE STATE'S FORESTS: TRENDS IN THE RESOURCE (2000), *available at* http://www.fs.fed.us/nc/newtown_square/publications/brochures/pdfs/state_forests/nh_forest.pdf.

50. *New Hampshire Population Growth*, CENSUSSCOPE, http://www.censusscope.org/us/s33/print_chart_popl.html (last visited Sept. 15, 2013); *see also,* N.H. DIV. OF FORESTS AND LANDS, *supra* note 49.

51. *Who Owns NH's Forests?*, N.H. PROJECT LEARNING TREE, http://www.nhplt.org/resources/educators_guide_to_nh_forests (last visited Sept. 15, 2013).

52. Weeks Act, Pub. L. No. 435, 36 Stat. 961 (1911).

53. WILLIAM E. SHANDS & ROBERT G. HEALY, THE LANDS NOBODY WANTED 15 (1977).

agitated for the creation of the WMNF, and it remains today one of the nation's foremost environmental organizations.[54]

As in New Hampshire, Vermont's Green Mountain National Forest, which is composed of the mountainous spine of the Green Mountains chain, was also created out of cut-over lands that were initially cleared for timber and then settled as farms. The GMNF came into being in 1932 during the Great Depression, when the federal government was able to purchase some acreage for as little as two cents a piece. As in the case of the WMNF and other Eastern national forests, the GMNF was preeminently a watershed protection project and currently contains over 400,000 acres.[55] Vermont owns an additional 300,000 acres in state forests, preserves, and parks.[56] Along with these public lands, the state includes hundreds of thousands of acres of privately owned forest lands.[57] Most of these lands are held for residential, second home, or recreational uses, where timber management practices are seldom a priority. And like neighboring New Hampshire, the species composition of the Vermont forest is not very diverse, consisting basically of maple, spruce, hemlock, fir, and birch.[58]

To many people, Maine remains the forest primeval. Or at least it looks that way. Cut over many times for timber and pulp and paper making, there really are two Maine forests, one in the more populous and growing south, and the great Maine North Woods. In terms of its composition, the Spruce Budworm outbreak of the 1960s and 70s played a major role in the decline of softwood timber and a corresponding increase in the state's hardwood inventory. Forestland in the southern counties of Maine—York, Cumberland, parts of Oxford, and Sagadahoc—has been on the decline, and this loss is closely related to a relatively new phenomenon, forest fragmentation and parcelization.[59] Fragmentation has been the subject of a major study in New Hampshire, too, though it is hardly a New England

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54. Joseph Hyde Pratt, *Twelve Years of Preparation for the Passage of the Weeks Law*, 34 J. OF FORESTRY, 1028–32 (1936); Terry West, *Creating the Eastern Forests*, 90 J. OF FORESTRY, 36 (1992).

55. *Green Mountain National Forest: Land & Resources Management*, USDA, U.S. FOREST SERVICE, http://www.fs.usda.gov/land/greenmountain/landmanagement (last visited Sept. 16, 2013); DIV. OF FORESTS, VT. DEP'T OF FORESTS, PARKS AND RECREATION, 2010 VERMONT FOREST RESOURCES – STATE ASSESSMENT OF RESOURCE STRATEGIES 94 (2010).

56. VT. DEP'T OF FORESTS, PARKS AND RECREATION, http://www.vtfpr.org (last visited Sept. 19, 2013).

57. *Id.*

58. LLOYD C. IRLAND, THE NORTHEAST'S CHANGING FOREST 25 (1999).

59. *Issues and Influences: Forest Fragmentation and Parcelization*, USDA, U.S. FOREST SERVICE, N. RESEARCH STATION http://www.nrs.fs.fed.us/futures/issues_influences/fragmentation_parcelization (last visited Sept. 21, 2013).

issue alone.[60] Fragmentation, especially on the urban-rural fringe, is becoming a major land use issue nationally.[61] Fragmentation occurs when large blocks of forestland are subdivided in anticipation of the sale of lots for development. As one U.S. Forest Service study in New England has described it:

> [f]orest fragments have been compared to oceanic islands, with rates of species extinction and decolonization related to woodlot 'island' size and nearness to larger woodlands. The paradigm may have some utility in describing effects on forest lands where the landscape consists of scattered woodlots separated by non-forest land uses such as agriculture or urban development.[62]

Beyond the ecological effects of forest fragmentation—such as the creation of "genetic bottlenecks"—and some public health concerns—as in the spread of Lyme Disease, as habitat disruption has created many new deer yards in urbanizing and rural sprawl areas—industry and jobs may be threatened as well.[63] This is the case with the white-pine lumber industry in southern Maine, where forest fragmentation has gradually whittled away at the region's long-term supply of this valuable species.[64]

Since the time of Thoreau, Maine's North Woods has been the subject of writers, poets, loggers, painters, speculators, conservationists, politicians, and almost everybody in between. This is not the place for a protracted discussion on either the status of or the future of this huge forested landscape. Suffice it to say that when Governor Percival P. Baxter purchased and put aside thousands of acres in and around Mt. Katahdin in 1930, he set in place a recognition that the forest and waters of northern Maine were special and that the forces of the market had to be restrained through careful planning and management.[65] After his death, the Baxter family gave what would become known as Baxter State Park to the people

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60. SARAH THORNE & DAN SUNDQUIST, NEW HAMPSHIRE'S VANISHING FORESTS: CONVERSION, FRAGMENTATION AND PARCELIZATION OF FORESTS IN THE GRANITE STATE 31 (2001).

61. SUSAN M. STEIN ET AL., USDA, U.S. FOREST SERVICE, N. RESEARCH STATION, FORESTS ON THE EDGE: HOUSING DEVELOPMENT ON AMERICA'S PRIVATE FORESTS 12 (2005).

62. Richard M. DeGraaf & William M. Healy, *Is Forest Fragmentation a Management Issue in the Northeast?*, USDA, U.S. FOREST SERVICE (1988).

63. *See generally* Environmental News Network staff, *Forest Fragmentation Creating Genetic Bottleneck*, CNN (Jul. 20, 1998, 1:27 PM), http://www.cnn.com/TECH/science/9807/20/forest.genetics.enn/ (revealing scientists discovery of deforestation in tropical areas may be more devastating than believed).

64. Tom Bell, *Threats to Timberlands*, ME. SUNDAY TELEGRAM, Dec. 1, 2002, at 1A-6A.

65. JOHN W. HAKOLA, LEGACY OF A LIFETIME: THE STORY OF BAXTER STATE PARK (1981); *See* NEIL ROLDE, THE INTERRUPTED FOREST: A HISTORY OF MAINE'S WILDLANDS 306 (2001) (detailing the 1930 Great Northern's board decision to sell 5,760 acres for $25,000).

of Maine to be managed "forever wild" as the Governor wished. Since that time, the Park has expanded through strategic acquisitions, and it now constitutes one of the largest intact pieces of forest wilderness in the East.[66] One contemporary issue illustrates the nature of some of the problems confronting the Great Woods.

In 2005, the Plum Creek Timber Company of Seattle ("Plum Creek") proposed to the Maine Land Use Regulation Commission ("LURC")[67] a massive housing development proposal encompassing twenty-six minor civil divisions in Somerset and Piscataquis Counties, and surrounding almost all of Moosehead Lake.[68] With its proposal to rezone approximately 408,000 acres, the Plum Creek development was to that time, and since, the largest single development ever proposed in Maine.[69] Slated for the Moosehead region, the development scheme included nearly one thousand housing units, a golf course, a marina, several rental cabins, services, such as a gas station and a general store, and several RV parks—all in a largely undeveloped part of the Maine North Woods. In 2007, following a great deal of public outcry, as well as some significant local support in the region, Plum Creek revised its proposal. The revision called for relocating several of the proposed house lots away from the shorefront, but increasing development of house lots inland and increasing the size of a resort on Big Moose Mountain outside of Greenville from 500 to 800 units, including hotel rooms, suites and house lots.[70] In addition, the revised plan called for ninety-six percent of the land (392,500 acres) to remain under permanent conservation, thereby restricting development to the remaining four percent.[71] Between 2007 and 2008, LURC held hearings on the proposed amended plan "involving 300 hours of hearings, millions of dollars in legal fees, and testimony from thousands of citizens," closing the public hearings

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66. ANDREW M. BARTON ET AL., THE CHANGING NATURE OF THE MAINE WOODS 125 (2012).

67. *See* Me. Rev. Stat. Ann. tit. 5, § 12004-Defendant, sub-§1-A (2012) (renaming the Maine Land Use Regulation Commission (LURC) as the Land Use Planning Commission (LUPC)).

68. Kevin Miller, *Plum Creek Development Gets OK from State Supreme Court*, BANGOR DAILY NEWS (March 15, 2012, 8:06 PM), http://bangordailynews.com/2012/03/15/news/piscataquis/plum-creek-development-gets-ok-from-supreme-court/?ref=search.

69. *Plum Creek's Plans for Maine's Moosehead Lake Region: The Facts and the Fine Print*, NATURAL RES. COUNCIL OF ME., http://www.nrcm.org/plumcreekfacts.asp (last visited Sept. 20, 2013).

70. Kevin Miller, *Plum Creek Revises Moosehead Plan Developer Proposes Fewer Shorefront Houses, Larger Resorts*, BANGOR DAILY NEWS (Apr. 28, 2007), http://archive.bangordailynews.com/2007/04/28/plum-creek-revises-moosehead-plan-developer-proposes-fewer-shorefront-houses-larger-resorts/.

71. *OSI's Plum Creek Analysis is Lauded*, OPEN SPACE INST. (Oct. 6, 2009), http://www.osiny.org/site/PageServer?pagename=Program_Institute_LandUseProjects_PlumCreek&printer_friendly=1.

on January 25, 2008.[72] After it had closed the public review process, LURC staff developed proposed amendments to the Plum Creek proposal, so the plan would meet regulatory requirements. Although LURC kept the record open for written public comment while deliberating on these amendments, the Commission did not hold a public evidentiary hearing prior to approving the final, revised plan on September 23, 2009.[73]

Both the Forest Ecology Network ("FEC") and the Natural Resources Council of Maine ("NRCM") immediately appealed the Commission's decision to the Superior Court, which consolidated the appeals.[74] In part, the appealing parties claimed that LURC should have taken an "up or down" vote on Plum Creek's application after its final public hearing but instead had improperly amended Plum Creek's petition post-public hearing; or in the alternative, if the plan was to be amended, LURC should have reopened the public hearing period. The Superior Court (Business and Consumer Docket) agreed, finding that LURC had "disregarded its Chapter 5 rules and engaged in an unauthorized, ad hoc procedure that prejudiced Petitioner's rights."[75] As a result, the Superior Court vacated LURC's approval of the Plum Creek Plan and remanded the matter back to LURC to correct its procedural errors.

Plum Creek, LURC, and others,[76] appealed the court's vacation order to the Maine Supreme Judicial Court. In March 2012, the Supreme Judicial Court overturned the lower court's decision, finding, in part, that LURC was not required to take an "up or down" vote after closing the public hearing; and further, that LURC was entitled to amend the proposed Plum Creek plan prior to approval without an evidentiary hearing.[77] While the thirty-year development plan is still years away, as a part of that final approval, in May 2012, Plum Creek conveyed a 363,000 acre easement to the Nature Conservancy that bans development and limits logging, while allowing public recreational access.[78]

What is significant here, other than the conflict between preservation and development in a relatively undeveloped and poor rural region, is the fact that increasingly the Maine woods are no longer owned by paper and

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72. Miller, *supra* note 68.

73. *LURC Approves Concept for Plum Creek's Lands in the Moosehead Region*, FOREST SOC'Y OF ME., http://www.fsmaine.org/lurc_approval.shtml (last visited Sept. 20, 2013).

74. Forest Ecology Network v. Land Use Regulatory Comm'n, 39 A.3d 74, 77 (Me. 2013).

75. Reply Brief for P. at 40, *Forest Ecology Network v. Land Use Regulation Comm'n*, 39 A.3d. 74 (Me. Super. Ct., May 26, 2010) (Docket No. BCD-WB-AP 09-37).

76. Reply Brief for Petitioner at 1, *Forest Ecology Network v. Land Use Regulation Comm'n*, 39 A.3d. 74 (Me. Super. Ct., May 26, 2010) (Docket No. BCD-WB-AP 09-37).

77. *Forest Ecology Network*, 39 A.3d at 88.

78. *Id.*

wood products companies.[79] These businesses are gradually divesting themselves of their forest properties, and their lands are being purchased by relatively new actors in the forest land market, namely timber investment management organizations ("TIMOs") and real estate investment trusts ("REITs"), both the results of changes in federal tax policy.[80] Concern over this change in land ownership, and in particular the sale by Diamond International Corporation of 790,000 acres of the Maine forest to a French conglomerate that proceeded to subdivide the land into parcels for rapid sales, led Congress to establish the Northern Forest Lands Commission.[81] In retrospect, according to several analysts:

> the Diamond International sale was the beginning of a process of divestiture of timberlands by Maine paper companies that has continued to this day. After nearly a century of profiting from vertical integration, new global realities changed the game: now the parts of a paper company (timberlands, mills, power-generating dams) sold separately were worth more than the whole... This has led to a shift in timberland ownership from industrial to investment owners.[82]

By 2009, forest product firm ownership had declined to approximately fifteen percent of the land, while that controlled by TIMOs and REITS has totaled almost sixty percent.[83] For TIMOs and REITS, forestland is no longer managed for long-term returns as part of a larger and more strategic business model. Rather, these investor organizations look for short-term investment returns with shareholders who require high returns in a relatively truncated period of time.[84] Much forestland is purchased in a piecemeal fashion and is heavily cut—through what are called "liquidation harvest"—and then the land is often subdivided and resold for development purchases.[85] In Maine, this often translated itself in the creation of "Kingdom Lots," very large properties, sometimes tens of thousands of

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79. *See* JOHN HAGAN ET AL., CHANGING TIMBERLAND OWNERSHIP IN THE NORTHERN FOREST AND IMPLICATIONS FOR BIODIVERSITY 10 (2005) (pointing out that between 1994 and 2005 large timber tract ownership shifted from being 60% forest industry owned and 3% investor-owned to 15.5% and roughly 33.3%, respectively).

80. 26 U.S.C. § 856 (2006).

81. *The Northern Forest Lands: The History*, THE N. FOREST LANDS, http://www.nefainfo.org/history.htm (last visited Sept. 20, 2013).

82. BARTON ET AL., *supra* note 66, at 128.

83. *Id.* at 208.

84. *Id.*

85. *Liquidation Harvesting Rulemaking*, ME. FOREST SERV., http://www.maine.gov/doc/mfs/fpm/liq/mainpage.html (last visited Sept. 21, 2013).

acres,[86] often located on ponds and lakes and where the land is used for vacation homes and other non-timber purposes. The paper industry and other wood product firms now own only a small portion of the Great Maine Woods and uncertainty about the future of the resource is now the norm.[87] Traditional uses, well-paying jobs, and public access on paper company lands, long the norms in this part of Maine, are already in decline. Between the years 1990 and 2004, there has been a loss of more than 9,000 jobs from Maine's forest industries and the remaining jobs may be "liquidated" over time too.[88]

The pressure for shifting land use priorities in northern Maine is not just coming from outside investors, however. Since 2011, when Paul R. LePage became Maine's seventy-fourth Governor, and particularly during the first two years of LePage's administration, when he had the support of a Republican majority in the Maine Legislature, there have been several significant legislative changes affecting the Great North Woods.[89] One example, noted above, is the evolution from the Land Use Regulatory Commission ("LURC") to the Land Use Planning Commission ("LUPC"). Initially introduced by the LePage administration as an effort to abolish LURC entirely, the final legislation kept a Commission in place, however significantly altered its scope and authority in the state's northern unorganized and deorganized territories. Unlike LURC, LUPC no longer oversees forestry permitting, now regulated by the Maine Department of Environmental Protection's ("MDEP") Bureau of Forestry.[90] Perhaps even more significantly, the Commission has been stripped of its prior oversight authority for statutorily defined environmentally significant developments such as mineral, gas or oil exploration, mining or production, and most developments of twenty acres or greater (such as the Plum Creek development).[91] Also, no longer under the Commission's jurisdiction are grid-scale wind energy developments. Redesigned as more of a prospective zoning and development authority, LUPC has been tasked with preparation

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86. JEFF PIDOT ET AL., NATURAL RES. COUNSEL OF ME., MAINE'S NORTH WOODS: CHANGES, CHALLENGES AND OPTIONS TO PROTECT MAINE'S HERITAGE 12.

87. Mike LeVert et al., *Are the Economics of a Sustainable Maine Forest Sustainable?*, 12 ME. POL'Y REV., 25, 27–28 (2007).

88. Charles Colgan, *Maine's Troubled Economic Base: The Natural Resource Industries in a National and Global Context*, 48 ME. BUS. INDICATORS 1, 7 (2004).

89. *Former Maine State Planning Office*, ME. STATE PLANNING OFFICE, http://www.maine.gov/spo/ (last visited Sept. 21, 2013).

90. Jym St. Pierre, *EXCLUSIVE: Nicholas Livesay Appointed New LURC Director* (Aug. 21, 2012), ME. ENVTL. NEWS, http://www.maineenvironews.com/Home/tabid/97/mid/628/newsid628/22523/Default.aspx.

91. Me. Rev. Stat. Ann. tit. 35-A, § 3451 (2012).

of a comprehensive plan for the unorganized and deorganized territories, and to assist in regional planning efforts.

Another noteworthy change brought about by the LePage administration occurred on July 1, 2012 with, after more than forty years of service to the State, the elimination of the Maine State Planning Office ("SPO").[92] Since its inception in 1968, the role of the SPO was to assist the governor's office and the numerous towns and regions within the state by providing such services as technical assistance, code officer training, economic forecasting and unbiased policy analysis. These services were performed through the SPO by the Office's ongoing coordination of various resources and agencies involved both in significant statewide projects, and in the more localized planning efforts of towns and municipalities throughout the state.[93] With the recent dismantling of the SPO, these services, where still provided, are no longer coordinated by one office but rather have been decentralized and scattered amongst several other state agencies, such as the Office of Policy and Management, Department of Agriculture, Conservation and Forestry, and the Governor's own Energy Office.[94]

Even with the increasing stress on the Great North Woods, the long decline of agriculture, and with it pasture and grasslands, crop lands, and open spaces, seems to have come to a halt, or at least the pace of decline in the amount of land in agriculture has slowed in the region. Indeed, the number of farms has increased significantly in Maine, for example, though the size of the average Maine farm has declined.[95] There are, then, more but smaller farms in Maine than in years past. In New Hampshire, the decline in farm acreage also seems to have ebbed and the average size of a farm in the Granite State has actually increased.[96] The situation in Vermont is complicated by the fact that there had been an increase in the number of farms in the early 2000s, but at the same time a decline in the number of dairy farms, which have traditionally defined Vermont agriculture and

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92. ME. STATE PLANNING OFFICE, *supra* note 89.

93. *See* Christine Parrish, *State Planning Office on Chopping Block*, THE FREE PRESS (April 14, 2011, 2:09 PM), http://freepressonline.com/main.asp?SectionID=52&SubSectionID=78&ArticleID=12144 (stating the Maine State Planning Office could close due to budget issues).

94. ME. STATE PLANNING OFFICE, *supra* note 89.

95. USDA, 2007 CENSUS OF AGRICULTURE: MAINE STATE AND COUNTY DATA 17 (2009), *available at* http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_1_State_Level/Maine/mev1.pdf.

96. USDA, 2007 CENSUS OF AGRICULTURE: NEW HAMPSHIRE STATE AND COUNTY DATA 17 (2009), *available at* http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_1_State_Level/New_Hampshire/nhv1.pdf.

much of the state's landscape.[97] The average size of the Vermont farm has stayed relatively stable over the last decade or so. Still, dairying remains the anchor of the commercial agricultural sector and represents the vast majority of the state's cash receipts from farming.[98]

These statistical realities fail to explain the growth in some parts of the region of agricultural enterprises, organic and specialty production, and the growth in the number of community supported agricultural operations and farmers' markets. Both Maine and New Hampshire are in the process of developing local food strategies and plans while Vermont implements its "Farm to Plate" strategy. Vermont's approach may emerge, perhaps curiously, as one of the most important developments in land use policy in the state's recent history. As throughout New England, the average age of the Vermont farmer is rising, and many will retire in the next decade. This invariably raises concerns over the future of the farmland base, since the sole proprietorship or family farm remains the backbone of the farming community in all three northern New England states.

Some land use issues tend to be idiosyncratic to each New England State, such as Maine's attempt to preserve its "working waterfronts."[99] Other land use problems in northern New England, such as sprawl, transportation, downtown renewal, and control over shoreline development are ubiquitous across state boundaries. One issue of both state and regional concern is the siting of energy facilities and transmission corridors, such as the controversial Northern Pass project. The Northern Pass project, a collaboration between two affiliated stateside utilities[100] and Hydro-Quebec, is a proposal to transport "up to 1,200 megawatts of hydropower from Canada to the New England power grid."[101] In order to transport this power supply, the plan calls for turning 180 miles of power lines, with towers ranging from 85 to 135 feet, from the Canadian border, through northern New Hampshire and the White Mountain National Forrest,

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97. USDS, 2007 CENSUS OF AGRICULTURE: VERMONT STATE AND COUNTY DATA 7 (2009), *available at* http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_1_State_Level/Vermont/vtv1.pdf; *The Number of Dairy Farms in Vermont*, VERMONT DAIRY, http://www.vermontdairy.com/learn/number-of-farms/ (last visited Sept. 21, 2013).

98. USDS, *supra* note 97 at 9.

99. THE ISLAND INSTITUTE, THE LAST 20 MILES: MAPPING MAINE'S WORKING WATERFRONT 1, 1 (David Platt ed., 2005); State Planning Office, *Four New Working Waterfront Access Protection Projects are Approved,* MAINE GOVERNMENT NEWS (Oct. 13, 2011), http://www.maine.gov/tools/whatsnew/index.php?topic=Portal+News&id=311690&v=article-2008.

100. *See* THE ISLAND INSTITUTE, *supra* note 99. (explaining the inclusion of Northeast Utilities and NSTAR in the partnership).

101. New Hampshire Public Radio, *Why the Northern Pass Project Matters*, NATIONAL PUBLIC RADIO, http://stateimpact.npr.org/new-hampshire/tag/northern-pass (last visited Sept. 21, 2013).

eventually terminating in southeastern New Hampshire.[102] In addition to very vocal resistance from groups such as the Society for the Protection of New Hampshire Forests to the project's plan to build its transmission lines across the Appalachian trail and other remote hiking areas, through wildlife habitat and wetlands, and significantly, through approximately ten miles of New Hampshire's national treasure, the majestic White Mountain range, the plan is facing major local resistance at the local level, where the use of eminent domain has thus far unsuccessfully been lobbied by the developer for forty miles of the project where there currently is no existing transmission corridor.[103]

CONCLUSION

While land use in New England has historically evolved slowly and over time, many now see the region's Great North Woods, panoramic pasturelands, working landscape, and rural way of life as being at a crossroads.[104] Driven by tough economic times and shifts in population brought on by loss of forestry and manufacturing jobs, resource rich but financially strapped rural communities are fighting the battle of Kingdom Lots and shrinking agricultural land. As Frost informed us "[t]he deed of gift was many deeds of war" and the battle to save the Northeast's vast rural lands from destruction through attrition has only just begun.[105]

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102. *Id.*

103. Christophe Courchesne, *A Message to the Energy Industry: The Demise of Northern Pass 1.0*, CONSERVATION LAW FOUND. (Apr. 26, 2013), http://www.clf.org/blog/clean-energy-climate-change/a-message-to-the-energy-industry-the-demise-of-northern-pass-1-0.

104. *See* MARK B. LAPPING, *Toward a Working Rural Landscape, in* NEW ENGLAND PROSPECTS: CRITICAL CHOICES IN A TIME OF CHANGE 59, 59 (Carl H. Reidel ed. 1982).

105. Frost, *supra* note 3.