



# Ensuring the Future of the South's Farmland and Forestland

Oklahoma City, Okla.  
Memphis, Tenn.  
Atlanta, Ga.

July 24-25, 2003  
Aug. 5-6, 2003  
Aug. 12-13, 2003



Father and son checking their watermelons



Georgia vidalia onions



Well-managed woodland in South Carolina



# ENSURING THE FUTURE OF THE SOUTH'S FARMLAND AND FORESTLAND

## INTRODUCTION AND ACKNOWLEDGMENTS

This workbook is a training and reference tool for participants in the educational program, *Ensuring the Future of the South's Farmland and Forestland*, organized by the Kerr Center for Sustainable Agriculture and sponsored by the Southern region of the Sustainable Agriculture Research and Education (SARE) program. It contains information to help you conduct future workshops and to help you respond to agricultural and forestry land use questions and concerns.

The workshops focus on land use and farm and forest land protection policies. They are intended to promote professional development for USDA field personnel from agencies including Cooperative Extension, the Natural Resources Conservation Service (NRCS) and the Farm Services Agency (FSA), as well as state farm and forestry leaders from the southern SARE region. SARE is a competitive grants program funded by USDA and the Environmental Protection Agency (EPA) to promote research and education about sustainable agriculture. Established in 1988, SARE has funded about 1900 projects to improve agricultural profitability, protect natural resources and foster more viable rural communities. SARE's southern region includes Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and the two U.S. protectorates, Puerto Rico and the Virgin Islands.

American Farmland Trust (AFT) was hired by the Kerr Center for Sustainable Agriculture to lead the development of this workbook and three training workshops around the Southeast in the summer of 2003. This effort was spearheaded by AFT's Southeast Regional office in conjunction with AFT's *Farmland Information Center*.

Workshop content and workbook materials have been overseen by an advisory committee comprised of farmers, university representatives, state agricultural and forestry officials, and non-governmental organizations from each state and protectorate of the region. This advisory committee was created with guidance from Langston University and Oklahoma State University.

This workbook includes plenty of room for you to add your own handouts, overheads and other materials so you can customize the workbook to suit your individual needs.

The Kerr Center is a nonprofit educational foundation formed in 1985 whose mission is to encourage a more sustainable agriculture in the state of Oklahoma and beyond. A sustainable agriculture is environmentally responsible, profitable for family farmers and equitable – giving farmers fair prices, fair access to markets, maximum opportunities and a good quality of life. By improving the quality of life for farmers, a sustainable agriculture also supports healthy, vital rural communities. The Kerr Center produces publications, sponsors educational events, operates a producer grant program and operates demonstration and research facilities.



American Farmland Trust is the largest private, nonprofit conservation organization dedicated to protecting the nation's strategic agricultural resources. Founded in 1980, AFT works to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment. AFT's Southeast Regional Office is located in Graham, North Carolina.

AFT provides a variety of services to landowners, land trusts, public officials, planners, agricultural agencies and others. Services include workshops on estate planning and farmland protection, Cost of Community Services studies, farmland protection program development and agricultural economic analysis.

The *Farmland Information Center* is a clearinghouse for information about farmland protection and stewardship. It is a public/private partnership between AFT and NRCS. Call for technical assistance at (800) 370-4879 or visit [www.farmlandinfo.org](http://www.farmlandinfo.org).

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# **Cost Of Community Services Studies:**

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Making <sup>the</sup> Case for Conservation

**BY JULIA FREEDGOOD**

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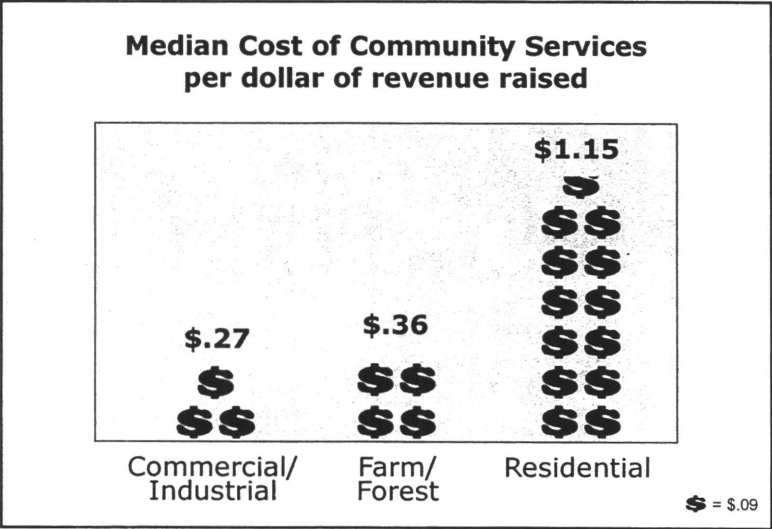
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# Executive Summary

**83 COCS studies conducted in 19 states found that revenues from farm, ranch and forest landowners more than covered the public costs these lands incur.**

Cost of Community Services (COCS) studies are a case study approach used to determine a community's public service costs versus revenues based on current land use. A subset of the much larger field of fiscal analysis, COCS studies have emerged as an inexpensive and reliable tool to measure the direct fiscal relationships between existing land uses. Their particular niche is to evaluate the overall contribution of agricultural and other open lands on equal ground with residential, commercial and industrial development.

As of January 2002, 83 COCS studies conducted in 19 states found that tax and other revenues collected from farm, ranch and forest landowners more than covered the public service costs these lands incur. Like traditional fiscal impact analyses, COCS studies show that on average, residential development generates significant tax revenue but requires costly public services that typically are subsidized by revenues from commercial and industrial land uses. The special contribution of COCS studies is that they show that farm, ranch and forest lands are important commercial land uses that help balance community budgets. Working lands are not just vacant land waiting around for development.





## Introduction

**S**aving land saves money. While community residents demand expensive public services and infrastructure, privately owned working lands enhance community character and quality of life without requiring significant public expenditures. Their fiscal contributions typically are overlooked, but like other commercial and industrial land uses, farm, ranch and forest lands generate surplus revenues that help balance community budgets. This is an important lesson learned from 15 years of Cost of Community Services (COCS) studies. Understanding the balance of land uses and their fiscal relationships can help citizens and community leaders improve the dialogue about planning for future growth, economic development, agriculture and conservation.



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**COCS studies measure the direct fiscal relationships between existing land uses.**

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COCS studies are a case study approach used to determine an individual community's public service costs versus revenues based on current land use. Their purpose is to uncover the fiscal contribution of working and open lands so they may be duly considered in the planning process. A recent and relatively narrow approach to fiscal analysis, COCS studies explore existing land use relationships. Their particular niche is to evaluate the overall contribution of agricultural and other open lands on equal ground with developed land uses.

Good planning involves outlining when, where and how residential, commercial and industrial development will occur. It also involves identifying land for recreation, agriculture, forest, flood control, wetlands, wildlife habitat or other conservation purposes. To make good decisions, local citizens and their leaders must know what they want to do and how much it will cost. COCS studies help inform

people of the relationship between how land is being used and the associated fiscal costs.

American Farmland Trust (AFT) became interested in growth-related issues in the 1980s because agricultural land is converted to development more commonly than any other type of land. According to USDA's National Resources Inventory (NRI), from 1992 to 1997 more than 11 million acres were converted to developed use—and more than half of that conversion was agricultural land.\* Farmland is desirable for building because it tends to be flat, well drained and has few physical limitations for development. It also is more affordable to developers than to farmers and ranchers. Every year since 1992, more than 1 million agricultural acres were developed, and the rate is increasing—up 51 percent from the rate reported during 1982-1992. At the same time, 29 percent more agricultural land was developed than forest land, which was the second most frequently converted land use.<sup>1</sup>

In 1986, AFT conducted a fiscal impact analysis called *Density Related Public Costs*. The study's researchers wanted to measure the public service costs to agricultural land, which fiscal impact analysis does not address. When they discovered a study of Clarke County, Virginia, conducted by the Piedmont Environmental Council (PEC)<sup>2</sup> that examined the fiscal impacts of three basic land use categories including farmland/open space, AFT adapted the methodology for a brief analysis at the end of the report. AFT expanded on the approach in a subsequent study of Hebron, Connecticut, which was well received. During the next two years, AFT teamed up with Cornell Cooperative Extension to replicate the study in Dutchess County, New York, and the Massachusetts Department of Food and Agriculture hired AFT to conduct three studies in the state's agricultural Pioneer Valley.

\* The NRI definition of agricultural land includes crop, pasture, range and Conservation Reserve Program (CRP) land.

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**Farmland is desirable for building because it tends to be flat, well drained and has few physical limitations for development.**

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Photo courtesy of USDA NRCS

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**"If land is being consumed at a faster rate than population growth, then a metropolitan area can be characterized as 'sprawling'."**

Brookings Institute

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Interested in applying the approach in other regions, AFT asked several agricultural economists and academic planners to review these studies to help strengthen the methodology. Since then, COCS has gained stature and national acceptance. In 1992, the Pioneer Valley study won regional and national merit awards from the Soil and Water Conservation Society, and in 1999 a study of five townships in Monmouth County, New Jersey, was awarded a local "Open Space Planning Award" from a county board of commissioners.

AFT originally used COCS studies to investigate three commonly held claims staff often encountered at community meetings:

1. Open lands—including working agricultural and forest lands—are an interim land use that should be developed to their "highest and best use";
2. Agricultural land gets an "unfair" tax break when it is assessed at its actual use value for farming or ranching instead of at its potential use value for development;
3. Residential development will lower property taxes by increasing the tax base.

Today, people also use the studies to add substance to policy debates about growth and land conservation. COCS findings have been used to bring agriculture to the table in local planning decisions, to support farmland protection programs and to inform the smart growth debate by demonstrating the relative fiscal importance of privately owned working lands. This report examines COCS studies as a community-planning tool and as a way to assess the fiscal impacts of agricultural and other privately owned and managed open lands.



Photo by Lynn Betts, USDA NRCS



## Growth and Conservation: Challenges for the New Millennium

Since World War II, American public policy has supported development patterns that have converted the working landscape to urban and suburban use with little accommodation for the social or environmental consequences. One result has been the unnecessary consumption of agricultural land. Others include scattered development, fragmented open space and dependency on automobiles.

This pattern commonly is described as urban sprawl, “dispersed development outside of compact urban and village centers along highways and in rural countryside.”<sup>3</sup> The Brookings Institute characterizes sprawl in terms of land resources consumed to accommodate new urbanization. In its 2001 report, *Who Sprawls Most?*, sprawl is described in the following terms: “If land is being consumed at a faster rate than population growth, then a metropolitan area can be characterized as ‘sprawling’.” However, the report also points out that, “Sprawl is an elusive term. To paraphrase the United States Supreme Court’s long-ago ruling on pornography, most people can’t define sprawl—but they know it when they see it.”<sup>4</sup> While the term may be elusive and lack an academic definition, characterizations of sprawl have common elements.<sup>5</sup> These include:

- Scattered, low-density development that uses a lot of land;
- Geographic separation of essential places, such as home, work and shopping; and
- Dependency on automobiles.<sup>6</sup>

Due to immigration and higher life expectancy, the U.S. population is growing at about 1 percent a year. According to the U.S. Census Bureau, from 1950 to 1990 the population increased from 150 to 250 million people and is expected to grow by another 150 million people in the next 50 years.<sup>7</sup> However, the conversion of agricultural land to sprawling development is not a response to the needs of a burgeoning population, but the result of economic prosperity, a weak farm economy and little or poor community planning—especially in rural areas.

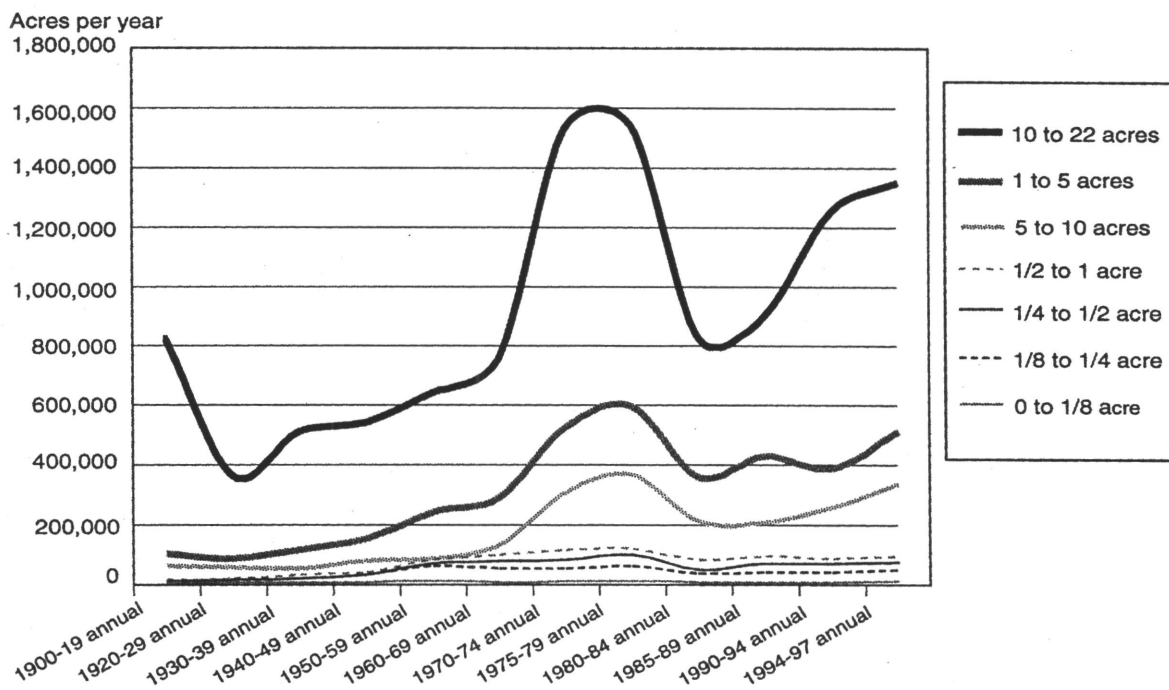
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**The loss of agricultural land to sprawl is not a response to a burgeoning population, but to economic prosperity, a weak farm economy and little or poor community planning.**

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According to a 2000 report by the U.S. Department of Housing and Urban Development (HUD), land in the United States is being consumed at twice the rate of population growth.<sup>8</sup> The Economic Research Service's (ERS) 2001 *Development at the Urban Fringe and Beyond* documented that "most of the land being developed for housing is not urban, as defined by Census, but occurs beyond the urban fringe in largely rural areas."<sup>9</sup> Most of this is very large-lot housing development: lots of 10 or more acres accounted for 55 percent of the growth in housing since 1994. According to this report, since 1970 the growth of large-lot development can be tied to periods of prosperity and recession. Overall, most of the growth occurred in the largest lot size category (10-22 acres), but only 5 percent of the acreage used by houses between 1994 and 1997 was associated with existing farms. "Nearly 80 percent of the acreage used for recently constructed housing ... is land outside urban areas or in non-metropolitan areas. Almost

**Annual additions to housing area, by lot size, 1900-97**



Source: Heimlich and Anderson, ERS, 2001

all of this land (94 percent) is in lots of 1 acre or larger, with 57 percent on lots of 10 acres or larger.”<sup>10</sup> A close look at the NRI shows that in the process, America’s best agricultural land is being developed fastest.

Beyond this inadvertent squandering of some of the world’s most important agricultural resources, people are paying the price for sprawling development patterns: increased property taxes, expensive infrastructure and budgetary shortfalls. Beyond the monetary costs, they lose open space and cherished landscapes, community heritage and character, wetlands, water quality, wildlife habitat and fresh food and other agricultural products that once were grown on local farms and ranches. Automobile use associated with sprawl exacts a societal toll on public health and safety and environmental quality.

Recently, local citizens and leaders at all levels of government have begun to make the connection between sprawl and its unintended social consequences. COCS studies have been an increasingly popular tool used to inform community debates about how and where to grow, and whether to invest public dollars to protect agricultural land and open space.

According to The Trust for Public Land, between 1998 and 2001, voters approved 529 referenda to fund nearly \$20 billion of open space protection.<sup>11</sup> The National Governors Association’s position on Better Land Use Policy, states “Public officials at the state and local levels are becoming increasingly aware of the impact that public expenditures can have on growth and the need for a more balanced approach to providing financial support for development.”<sup>12</sup>

Agricultural land conservation can help mitigate the tensions by directing development away from high-quality agricultural soils and ecologically sensitive areas. Recognizing this potential, the U.S. Conference of Mayors took a stand on sprawl by adopting a resolution “Promoting the Preservation of Urban-Influenced Farmland” at its 69th Annual Conference, June 2001: “Whereas, The U.S. Conference of Mayors recognizes that protecting important urban-influenced farmland through the purchase of conservation easements is a valuable smart growth tool, which can assist in creating a comprehensive smart growth plan.”<sup>13</sup>

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**Protecting important urban-influenced farmland through the purchase of conservation easements is a valuable smart growth tool.**

U.S. Conference of Mayors  
Resolution, June 2001

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**COCS studies find working lands more than pay for the services they receive—and typically make a contribution similar to commercial and industrial lands.**

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Suffolk County, New York, funded the first purchase of development rights (PDR) program (also known as purchase of agricultural conservation easements) in 1977. Twenty-five years later, 19 states and more than 40 localities have enacted PDR programs to protect agricultural land. Between 1996 and 2002, state spending to purchase agricultural conservation easements more than doubled from \$635 million to \$1.4 billion, local spending reached \$600 million, and USDA invested \$53 million to match state and local spending. The recent farm bill, called the Farm Security and Rural Investment Act of 2002, includes \$597 million for farmland protection through 2007.

Since 1956, when the state of Maryland passed the first law of its kind, the most common tax incentive for agricultural land protection has been use assessment.\* By the turn of the century, 49 states had programs that tax farm, forest and other designated lands at their actual, or “current use value,” instead of their potential value at “highest and best use,” and all 50 states had some kind of tax incentives to maintain the economic viability of agriculture and to protect agricultural land from unnecessary conversion to urban use. However, periodically these laws are challenged for giving agricultural landowners an unfair tax break. This is one of the main reasons AFT became interested in conducting COCS studies.

### **COCS Studies Help Inform the Debate**

COCS studies can’t take credit for the dramatic increase in state and local investment in land protection, or the public’s willingness to pay for it through tax policies or PDR funding. But they do contribute to the knowledge base that supports these policy decisions. Like traditional fiscal impact analyses, COCS studies show that on average, existing residential development generates significant property tax revenue, but residents demand costly public services that must be subsidized by tax revenues from commercial and industrial land uses. The special contribution of COCS studies is the finding that working lands are also an important commercial land use that helps balance community budgets. They are more than just vacant land waiting around for development.

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\* Among other titles, use assessment laws also are known as differential use assessment, preferential assessment, current use assessment, current use valuation and farm use valuation.



# FACT SHEET

## COST OF

## COMMUNITY

## SERVICES

## STUDIES



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### DESCRIPTION

Cost of Community Services (COCS) studies are a case study approach used to determine the average fiscal contribution of existing local land uses. A subset of the much larger field of fiscal analysis, COCS studies have emerged as an inexpensive and reliable tool to measure direct fiscal relationships. Their particular niche is to evaluate working and open lands on equal ground with residential, commercial and industrial land uses.

COCS studies are a snapshot in time of costs versus revenues for each type of land use. They do not predict future costs or revenues or the impact of future growth. They do provide a baseline of current information to help local officials and citizens make informed land use and policy decisions.

### METHODOLOGY

In a COCS study, researchers organize financial records to assign the cost of municipal services to working and open lands, as well as to residential, commercial and industrial development. Researchers meet with local sponsors to define the scope of the project and identify land use categories to study. For example, working lands may include farm, forest and/or ranch lands. Residential development includes all housing, including rentals, but if there is a migrant agricultural work force, temporary housing for these workers would be considered part of agricultural land use. Often in rural communities, commercial and industrial land uses are combined. COCS studies' findings are displayed as a set of ratios that compare annual revenues to annual expenditures for a community's unique mix of land uses.

COCS studies involve three basic steps:

1. Collect data on local revenues and expenditures.
2. Group revenues and expenditures and allocate them to the community's major land use categories.
3. Analyze the data and calculate revenue-to-expenditure ratios for each land use category.

The process is straightforward, but ensuring reliable figures requires local oversight. The most complicated task is interpreting existing records to reflect COCS land use categories. Allocating revenues and expenses requires a significant amount of research, including extensive interviews with financial officers and public administrators.

### HISTORY

Communities often evaluate the impact of growth on local budgets by conducting or commissioning fiscal impact analyses. Fiscal impact analyses project public costs and revenues from different land development patterns. They generally show that residential development is a net fiscal loss for communities and recommend commercial and industrial development as a strategy to balance local budgets.

Rural towns and counties that would benefit from fiscal impact analyses rarely have the expertise or resources to conduct them, as studies tend to be expensive. Also, fiscal impact analyses rarely consider the contribution of working and other open lands uses, which are very important to rural economies.

Agricultural land is converted to development more commonly than any other land use. American Farmland Trust (AFT) developed COCS studies in the mid-1980s to provide communities with a straightforward and inexpensive way to measure the contribution of agricultural lands to the local tax base. Since then, COCS studies have been conducted in at least 95 communities in the United States.

### FUNCTIONS & PURPOSES

Communities pay a high price for unplanned growth. Scattered development frequently causes traffic congestion, air and water pollution, loss of open space and increased demand for costly public services. This is why it is important for citizens and local leaders to understand the relationships between residential and commercial growth, agricultural land use, conservation and their community's bottom line.

## COST OF COMMUNITY SERVICES STUDIES

For additional information on COCS studies and farmland protection contact AFT's Farmland Information Center (FIC.) The FIC offers reports, an online library and technical assistance. Call us at (800) 370-4879 or visit us on the Web at <http://www.farmlandinfo.org>.

COCS studies help address three claims that are commonly made in rural or suburban communities facing growth pressures:

1. Open lands—including productive farms and forests—are an interim land use that should be developed to their “highest and best use.”
2. Agricultural land gets an unfair tax break when it is assessed at its current use value for farming or ranching instead of at its potential use value for residential or commercial development.
3. Residential development will lower property taxes by increasing the tax base.

While it is true that an acre of land with a new house generates more total revenue than an acre of hay or corn, this tells us little about a community's bottom line. In areas where agriculture or forestry are major industries, it is especially important to consider the real property tax contribution of privately owned working lands. Working and other open lands may generate less revenue than residential, commercial or industrial properties, but they require little public infrastructure and few services.

COCS studies conducted over the last 15 years show working lands generate more public revenues than they receive back in public services. Their impact on community coffers is similar to that of other commercial and industrial land uses. On average, because residential land uses do not cover their costs, they must be subsidized

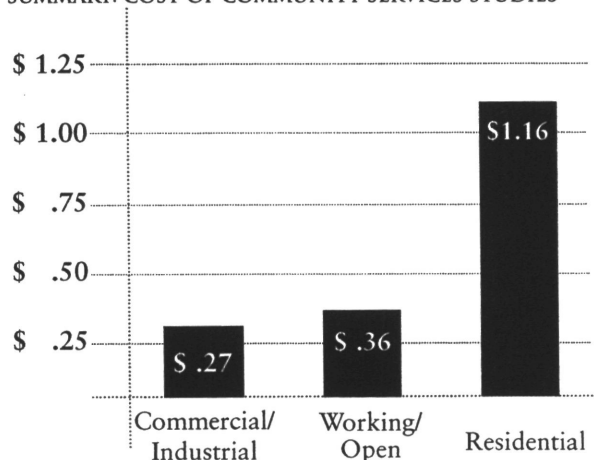
by other community land uses. Converting agricultural land to residential land use should be seen as a way to balance local budgets.

The findings of COCS studies are consistent with those of conventional fiscal impact analyses, which document the high cost of residential development and recommend commercial and industrial development to help balance local budgets. What is unique about COCS studies is that they show that agricultural land is similar to other commercial and industrial land uses. In every community studied, farmland has generated a fiscal surplus to help offset the shortfall created by residential demand for public services. This is true even when the land is assessed at its current, agricultural use.

Communities need reliable information to help them see the full picture of their land uses. COCS studies are an inexpensive way to evaluate the net contribution of working and open lands. They can help local leaders discard the notion that natural resources must be converted to other uses to ensure fiscal stability. They also dispel myths that residential development leads to lower taxes, that differential assessment programs give landowners an “unfair” tax break, and that farmland is an interim land use just waiting around for development.

One type of land use is not intrinsically better than another, and COCS studies are not meant to judge the overall public good or long-term merits of any land use or taxing structure. It is up to communities to balance goals such as maintaining affordable housing, creating jobs and conserving land. With good planning, these goals can complement rather than compete with each other. COCS studies give communities another tool to make decisions about their futures.

SUMMARY: COST OF COMMUNITY SERVICES STUDIES



*Graph: Median cost—per dollar of revenue raised—to provide public services to different land uses.*

## SUMMARY OF COST OF COMMUNITY SERVICES STUDIES, REVENUE-TO-EXPENDITURE RATIOS IN DOLLARS

Community	Residential including farm houses	Commercial & Industrial	Working & Open Land	Source
<b>Colorado</b>				
Custer County	1 : 1.16	1 : 0.71	1 : 0.54	Haggerty, 2000
Saguache County	1 : 1.17	1 : 0.53	1 : 0.35	Dirt, Inc., 2001
<b>Connecticut</b>				
Bolton	1 : 1.05	1 : 0.23	1 : 0.50	Geisler, 1998
Durham	1 : 1.07	1 : 0.27	1 : 0.23	Southern New England Forest Consortium, 1995
Farmington	1 : 1.33	1 : 0.32	1 : 0.31	Southern New England Forest Consortium, 1995
Hebron	1 : 1.06	1 : 0.47	1 : 0.43	American Farmland Trust, 1986
Litchfield	1 : 1.11	1 : 0.34	1 : 0.34	Southern New England Forest Consortium, 1995
Pomfret	1 : 1.06	1 : 0.27	1 : 0.86	Southern New England Forest Consortium, 1995
<b>Georgia</b>				
Carroll County	1 : 1.29	1 : 0.37	1 : 0.55	Dorfman and Black, 2002
<b>Idaho</b>				
Canyon County	1 : 1.08	1 : 0.79	1 : 0.54	Hartmans and Meyer, 1997
Cassia County	1 : 1.19	1 : 0.87	1 : 0.41	Hartmans and Meyer, 1997
<b>Kentucky</b>				
Lexington-Fayette	1 : 1.64	1 : 0.22	1 : 0.93	American Farmland Trust, 1999
<b>Maine</b>				
Orono	1 : 1.29	1 : 0.59	1 : 0.06	Good, 1994
<b>Maryland</b>				
Carroll County	1 : 1.15	1 : 0.48	1 : 0.45	Carroll County Dept. of Management & Budget, 1994
Cecil County	1 : 1.17	1 : 0.34	1 : 0.66	American Farmland Trust, 2001
Cecil County	1 : 1.12	1 : 0.28	1 : 0.37	Cecil County Office of Economic Development, 1994
Frederick County	1 : 1.14	1 : 0.50	1 : 0.53	American Farmland Trust, 1997
Kent County	1 : 1.05	1 : 0.64	1 : 0.42	American Farmland Trust, 2002
Wicomico County	1 : 1.21	1 : 0.33	1 : 0.96	American Farmland Trust, 2001
<b>Massachusetts</b>				
Agawam	1 : 1.05	1 : 0.44	1 : 0.31	American Farmland Trust, 1992
Becket	1 : 1.02	1 : 0.83	1 : 0.72	Southern New England Forest Consortium, 1995
Deerfield	1 : 1.16	1 : 0.38	1 : 0.29	American Farmland Trust, 1992
Franklin	1 : 1.02	1 : 0.58	1 : 0.40	Southern New England Forest Consortium, 1995
Gill	1 : 1.15	1 : 0.43	1 : 0.38	American Farmland Trust, 1992
Leverett	1 : 1.15	1 : 0.29	1 : 0.25	Southern New England Forest Consortium, 1995
Middleboro	1 : 1.08	1 : 0.47	1 : 0.70	American Farmland Trust, 2001
Southborough	1 : 1.03	1 : 0.26	1 : 0.45	Adams and Hines, 1997
Westford	1 : 1.15	1 : 0.53	1 : 0.39	Southern New England Forest Consortium, 1995
Williamstown	1 : 1.11	1 : 0.34	1 : 0.40	Hazler et al., 1992
<b>Michigan</b>				
Calhoun County				
Marshall Township	1 : 1.47	1 : 0.20	1 : 0.27	American Farmland Trust, 2001
Newton Township	1 : 1.20	1 : 0.25	1 : 0.24	American Farmland Trust, 2001
Scio Township	1 : 1.40	1 : 0.28	1 : 0.62	University of Michigan, 1994



## SUMMARY OF COST OF COMMUNITY SERVICES STUDIES, REVENUE-TO-EXPENDITURE RATIOS IN DOLLARS

Community	Residential including farm houses	Commercial & Industrial	Working & Open Land	Source
<b>Minnesota</b>				
Farmington	1 : 1.02	1 : 0.79	1 : 0.77	American Farmland Trust, 1994
Lake Elmo	1 : 1.07	1 : 0.20	1 : 0.27	American Farmland Trust, 1994
Independence	1 : 1.03	1 : 0.19	1 : 0.47	American Farmland Trust, 1994
<b>Montana</b>				
Carbon County	1 : 1.60	1 : 0.21	1 : 0.34	Prinzing, 1999
Gallatin County	1 : 1.45	1 : 0.16	1 : 0.25	Haggerty, 1996
Flathead County	1 : 1.23	1 : 0.26	1 : 0.34	Citizens for a Better Flathead, 1999
<b>New Hampshire</b>				
Deerfield	1 : 1.15	1 : 0.22	1 : 0.35	Auger, 1994
Dover	1 : 1.15	1 : 0.63	1 : 0.94	Kingsley et al., 1993
Exeter	1 : 1.07	1 : 0.40	1 : 0.82	Niebling, 1997
Fremont	1 : 1.04	1 : 0.94	1 : 0.36	Auger, 1994
Groton	1 : 1.01	1 : 0.12	1 : 0.88	New Hampshire Wildlife Federation, 2001
Stratham	1 : 1.15	1 : 0.19	1 : 0.40	Auger, 1994
Lyme	1 : 1.05	1 : 0.28	1 : 0.23	Pickard, 2000
<b>New Jersey</b>				
Freehold Township	1 : 1.51	1 : 0.17	1 : 0.33	American Farmland Trust, 1998
Holmdel Township	1 : 1.38	1 : 0.21	1 : 0.66	American Farmland Trust, 1998
Middletown Township	1 : 1.14	1 : 0.34	1 : 0.36	American Farmland Trust, 1998
Upper Freehold Township	1 : 1.18	1 : 0.20	1 : 0.35	American Farmland Trust, 1998
Wall Township	1 : 1.28	1 : 0.30	1 : 0.54	American Farmland Trust, 1998
<b>New York</b>				
Amenia	1 : 1.23	1 : 0.25	1 : 0.17	Bucknall, 1989
Beekman	1 : 1.12	1 : 0.18	1 : 0.48	American Farmland Trust, 1989
Dix	1 : 1.51	1 : 0.27	1 : 0.31	Schuyler County League of Women Voters, 1993
Farmington	1 : 1.22	1 : 0.27	1 : 0.72	Kinsman et al., 1991
Fishkill	1 : 1.23	1 : 0.31	1 : 0.74	Bucknall, 1989
Hector	1 : 1.30	1 : 0.15	1 : 0.28	Schuyler County League of Women Voters, 1993
Kinderhook	1 : 1.05	1 : 0.21	1 : 0.17	Concerned Citizens of Kinderhook, 1996
Montour	1 : 1.50	1 : 0.28	1 : 0.29	Schuyler County League of Women Voters, 1992
Northeast	1 : 1.36	1 : 0.29	1 : 0.21	American Farmland Trust, 1989
Reading	1 : 1.88	1 : 0.26	1 : 0.32	Schuyler County League of Women Voters, 1992
Red Hook	1 : 1.11	1 : 0.20	1 : 0.22	Bucknall, 1989
<b>Ohio</b>				
Madison Village	1 : 1.67	1 : 0.20	1 : 0.38	American Farmland Trust, 1993
Madison Township	1 : 1.40	1 : 0.25	1 : 0.30	American Farmland Trust, 1993
Shalersville Township	1 : 1.58	1 : 0.17	1 : 0.31	Portage County Regional Planning Commission, 1997

## SUMMARY OF COST OF COMMUNITY SERVICES STUDIES, REVENUE-TO-EXPENDITURE RATIOS IN DOLLARS

Community	Residential including farm houses	Commercial & Industrial	Working & Open Land	Source
<b>Pennsylvania</b>				
Allegheny Township	1 : 1.06	1 : 0.14	1 : 0.13	Kelsey, 1997
Bedminster Township	1 : 1.12	1 : 0.05	1 : 0.04	Kelsey, 1997
Bethel Township	1 : 1.08	1 : 0.17	1 : 0.06	Kelsey, 1992
Bingham Township	1 : 1.56	1 : 0.16	1 : 0.15	Kelsey, 1994
Buckingham Township	1 : 1.04	1 : 0.15	1 : 0.08	Kelsey, 1996
Carroll Township	1 : 1.03	1 : 0.06	1 : 0.02	Kelsey, 1992
Hopewell Township	1 : 1.27	1 : 0.32	1 : 0.59	The South Central Assembly for Effective Governance, 2002
Maiden Creek Township	1 : 1.28	1 : 0.11	1 : 0.06	Kelsey, 1998
Richmond Township	1 : 1.24	1 : 0.09	1 : 0.04	Kelsey, 1998
Shrewsbury Township	1 : 1.22	1 : 0.15	1 : 0.17	The South Central Assembly for Effective Governance, 2002
Stewardson Township	1 : 2.11	1 : 0.23	1 : 0.31	Kelsey, 1994
Straban Township	1 : 1.10	1 : 0.16	1 : 0.06	Kelsey, 1992
Sweden Township	1 : 1.38	1 : 0.07	1 : 0.08	Kelsey, 1994
<b>Rhode Island</b>				
Hopkinton	1 : 1.08	1 : 0.31	1 : 0.31	Southern New England Forest Consortium, 1995
Little Compton	1 : 1.05	1 : 0.56	1 : 0.37	Southern New England Forest Consortium, 1995
Portsmouth	1 : 1.16	1 : 0.27	1 : 0.39	Johnston, 1997
West Greenwich	1 : 1.46	1 : 0.40	1 : 0.46	Southern New England Forest Consortium, 1995
<b>Texas</b>				
Bandera County	1 : 1.10	1 : 0.26	1 : 0.26	American Farmland Trust, 2002
Hays County	1 : 1.26	1 : 0.30	1 : 0.33	American Farmland Trust, 2000
<b>Utah</b>				
Cache County	1 : 1.27	1 : 0.25	1 : 0.57	Snyder and Ferguson, 1994
Sevier County	1 : 1.11	1 : 0.31	1 : 0.99	Snyder and Ferguson, 1994
Utah County	1 : 1.23	1 : 0.26	1 : 0.82	Snyder and Ferguson, 1994
<b>Virginia</b>				
Augusta County	1 : 1.22	1 : 0.20	1 : 0.80	Valley Conservation Council, 1997
Clarke County	1 : 1.26	1 : 0.21	1 : 0.15	Piedmont Environmental Council, 1994
Northampton County	1 : 1.13	1 : 0.97	1 : 0.23	American Farmland Trust, 1999
<b>Washington</b>				
San Juan County	1 : 1.28	1 : 0.27	1 : 0.71	American Farmland Trust, 2002
Skagit County	1 : 1.25	1 : 0.30	1 : 0.51	American Farmland Trust, 1999
<b>Wisconsin</b>				
Dunn	1 : 1.06	1 : 0.29	1 : 0.18	Town of Dunn, 1994
Dunn	1 : 1.02	1 : 0.55	1 : 0.15	Wisconsin Land Use Research Program, 1999
Perry	1 : 1.20	1 : 1.04	1 : 0.41	Wisconsin Land Use Research Program, 1999
Westport	1 : 1.11	1 : 0.31	1 : 0.13	Wisconsin Land Use Research Program, 1999

American Farmland Trust's Farmland Information Center acts as a clearinghouse for information about Cost of Community Services studies. Inclusion in this table does not necessarily signify review or endorsement by American Farmland Trust.

## 2. Planning for Ag.

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## AGRICULTURAL DISTRICTS: A Tool for Protecting Local Agriculture

Like much of rural America, Haywood County, North Carolina, is not fully zoned, and government-imposed growth control measures are unpopular. Yet, Haywood is one of a growing number of North Carolina counties that recently adopted a voluntary agricultural district program. Already, say local observers, the fledgling program is influencing the way residents look at land use planning and land conservation.

"It's getting people thinking in the direction of open spaces and preserving their farms," says Leslie Smathers, an official with the Haywood County Soil and Water Conservation District. Development, linked both to growth in North Carolina's high-tech industry and increasing demand for retirement and second homes throughout the Southeast, is changing rural counties. "We're trying to find a balance between the farms we have left and the second home buyers and the local buyers," Smathers says.

North Carolina is one of 16 states that have agricultural district laws allowing farmers to form special areas where commercial agriculture is protected and encouraged. These programs are designed to support farming by offering a package of incentives in exchange for voluntary enrollment. Because agricultural districts are flexible, the benefits and restrictions can be designed to meet local conditions and goals.

Terms of enrollment—such as minimum acreage requirements, years of enrollment and limits on development—vary widely, as do the incentives agricultural districts offer. Benefits can include agricultural tax assessments; exemptions from local regulation; restrictions on public infrastructure improvements; protections from eminent domain, annexation, and private nuisance lawsuits; and eligibility for purchase of agricultural conservation easement (PACE) programs.

The impact of agricultural districts on land protection varies just as widely, depending on whether the program is tied to property tax relief or PACE. While they are not a substitute for permanent land protection, districts support agriculture and help stabilize land uses. According to North Carolina's Farmland Preservation Enabling Act, "The purpose of such agricultural districts shall be to increase identity and pride in the agricultural community and its way of life and to increase protection from nuisance suits and other negative impacts on properly managed farms."

California and New York have the oldest programs and—due to their property tax relief provisions—the highest number of acres enrolled. Both programs have been adapted and expanded over time to meet emerging needs.

California's 1965 Williamson Act was designed to preserve agricultural lands and open space and to promote efficient urban growth patterns. It is voluntary, allowing landowners to sign renewable 10-year contracts with participating counties to restrict use of their land to agriculture and open space. In return, the land is assessed at its agricultural use value, providing significant property tax relief to landowners. California reimburses local governments for the loss of property taxes through a mechanism called subventions—in some cases providing more in subventions than the locality would have received through the property taxes.

Of the state's 58 counties, 53 participate. Approximately 16 million acres of agricultural land are enrolled—about half the state's agricultural land and one-third of all privately owned land—and California spends about \$39 million a year on subventions. "The Williamson Act subventions appear to be safe in this year's state budget despite a \$23.6 billion shortfall. The budget bill has passed in the Senate and is pending action in the Assembly....Our grassroots lobbying campaign appears to be paying off," says John Gamper of the California Farm Bureau Federation.

In 1998, California passed another law creating Farmland Security Zones (FSZ). Farmers who sign a 20-year FSZ contract receive expanded district benefits, including a 35 percent reduction over their Williamson Act property tax assessment. FSZ provisions also provide greater restrictions on siting of public facilities and annexation by local governments.

"In addition to protecting over half of California's prime farmland, the Williamson Act has protected our rangeland resources from being parcelized, which also protects habitat and watersheds," says Gamper, adding that having those lands subdivided into "second homes and rural ranchettes would be just devastating to the state."

What's debatable "is whether it's been effective in limiting growth around our cities, particularly cities in the agricultural regions of the state," says Erik Vink of the California Department of Conservation's Division of Land Resource Protection, which administers

*continued on page 4*

## Agricultural Districts *continued from page 2*

the program. Vink says owners of land on the urban edge tend to use the law's 10-year non-renewal provision to withdraw from the program.

**"We'd like to see  
agricultural districts  
in all 100 counties."**

**—Steve Woodson,  
North Carolina Farm Bureau**

While the law does not prohibit public agencies from placing public improvements, such as schools, water treatment plants and roads, on land restricted by a Williamson Act contract, it does require them to show that the location is not based on cost and that there is no other land that is feasible. Often, though not always, those provisions steer development away from Williamson Act land. "It's been effective as a backstop for local elected officials to say no to development proposals that would be located on Williamson Act land," Vink says. "It's also made growth more thoughtful because of the 10-year exit process and prevents the kinds of opportunistic development proposals that might be tempting to local officials."

New York's comprehensive agricultural districts law, established in 1971 and strengthened by subsequent amendments, makes differential assessment available to farmers and provides protections against unreasonable local regulation and eminent domain. At the close of 2000, there were 343 New York agricultural districts comprising approximately 21,758 farms and 8.58 million acres. (See the Spring 2002 *Connection*, posted on the LandWorks Web site.)

New York's law requires state agency policies to support farming in agricultural districts and prevents local governments from unreasonably restricting agricultural operations through ordinances and land use decisions. In 2001 the state's Department of Agriculture and Markets conducted 41 case reviews involving conflicts and potential conflicts between local regulations and protections contained in the agricultural districts law. The number of cases is increasing as farmers and local governments become aware of the law's protections. But unlike California, New York does not restrict development, it only assesses a roll-back tax and possibly a penalty for conversion.

"The biggest challenge facing New York's agricultural districts is gaining support from municipalities and non-farm neighbors," says Jessica Chittenden, spokeswoman for the Department of Agriculture and Markets. "There has been an increasing opposition from non-farm neighbors to farm practices that are protected in an agricultural district from local restrictive ordinances."

Under New Jersey's "Eight-Year" program, landowners voluntarily restrict non-farm development for eight years to be eligible for grants for 50 percent of the costs of approved soil and water conservation projects. Landowners in municipally approved programs receive additional protections from nuisance suits, emergency fuel and water rationing, zoning changes and eminent domain. The state recently launched a new initiative that encourages counties and municipalities to create large, multi-farm districts. If an owner wants to sell an "eight-year" property, the State Agriculture Development Committee (SADC) has the first right to purchase the property.

Typical of many states, New Jersey requires counties that adopt an agricultural district program to establish local agricultural boards. While these boards are designed to help the counties rank farms for possible purchase of conservation easements, they also provide a crucial voice for agriculture in public policy decision-making. "They're independent bodies at the local level that look at farmland preservation efforts in their areas, says Robert Baumley, assistant director of the SADC. Boards "can also play a broader role, looking at the whole agricultural industry in their area," Baumley says.

This is starting to take place in North Carolina, too. Recent training and networking programs for agricultural advisory boards are developing a stronger voice for agriculture in county decision-making. "Right now they see their role primarily as holding hearings on condemnation of farmland, but the law also allows them to hold hearings on anything that affects farms and farmland in the county," says Steve Woodson of the North Carolina Farm Bureau. "We tell them they should be looking at things like present use value schedules and land use planning issues—to tell the board of commissioners how it will affect agriculture."

Thus far only 25 of North Carolina's 100 counties have adopted an agricultural district ordinance. Although the law is 20 years old, roughly half the counties that have adopted agricultural districts did so over the last three years, spurred by sprawl and increasing nuisance complaints against farmers. "Farmers are starting to get some awareness of how growth issues affect their ability to farm," says AFT's Southeast Director Gerry Cohn. The North Carolina Farm Bureau and NCSU Extension promote ag districts as well. Up to 10 additional counties are considering participating in the program, says Woodson. "We'd like to see agricultural districts in all 100 counties," he says.

Compared to some states, North Carolina's agricultural districts law is weak, offering a limited menu of options. Eleven other states, for example, include a local planning requirement. Seven restrict public investment for non-farm development, and six impose significant sanctions for withdrawal. Some other states (notably Maryland, Delaware and Pennsylvania) link agricultural district participation to eligibility for agricultural easement acquisition programs. Moreover, because differential property tax assessments are available to North Carolina farmers regardless of their participation in an agricultural district, that incentive is not available (as in New York and California) to encourage enrollment. *continued on page 8*

### **For more information:**

#### **California Division Land Conservation Act**

[www.consrv.ca.gov/dlrp/LCA/  
index.htm](http://www.consrv.ca.gov/dlrp/LCA/index.htm)

#### **New York Farmland Protection Program**

[www.agmkt.state.ny.us/AP/  
FarmlandProtection.html](http://www.agmkt.state.ny.us/AP/<br/>FarmlandProtection.html)


#### **New Jersey State Agricultural Board**

[www.state.nj.us/agriculture/  
sadc/sadc.htm](http://www.state.nj.us/agriculture/<br/>sadc/sadc.htm)

## **Agricultural Districts** *continued from page 4*

Still, North Carolina's law has increasing appeal. In exchange for limiting development for a 10-year period, farmers can receive enhanced right-to-farm protections, exemption from mandatory water and sewer hook-ups, and a required hearing prior to condemnation of farmland. Another attractive component is a notification provision designed to reduce conflicts with non-farm neighbors. The provision requires that a written notice, including warnings of farm-related noise, dust and odors, be sent to anyone buying property within a specific distance of an agricultural district.

Smathers credits the Haywood County farmers' experience with the agricultural district as the first step in getting some interested in donating conservation easements to protect their farms and help transfer them to the next generation of farmers.

"As farmers see the advantages of blocks of land being limited from development in the short term, they start to get a broader picture of the benefits of permanent land conservation," says Cohn.  B.H.



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# FACT SHEET

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### DESCRIPTION

Agricultural district programs allow farmers to form special areas where commercial agriculture is encouraged and protected. Programs are authorized by state legislatures and implemented at the local level. Enrollment in agricultural districts is voluntary. In exchange for enrollment, farmers receive a package of benefits that varies from state to state. Minimum acreage requirements and initial terms of enrollment also vary. Agricultural district programs should not be confused with zoning districts that delineate areas governed by local land use regulations.

There are a total of 18 agricultural district laws in 16 states. Both Minnesota and Virginia have statewide and local agricultural district programs. Provisions vary widely, but most agricultural district laws are intended to be comprehensive responses to the challenges facing farmers in developing communities.

To maintain a land base for agriculture, some agricultural district laws protect farmland from annexation and eminent domain. Many laws also require that state agencies limit construction of infrastructure, such as roads and sewers, in agricultural districts. Three states offer participants eligibility for purchase of agricultural conservation easement programs, and two states include a right of first refusal in district agreements to ensure that land will continue to be available for agriculture.

Agricultural district laws help create a more secure climate for agriculture by preventing local governments from passing laws that restrict farm practices, and by providing enhanced protection from private nuisance lawsuits.

To reduce farm operating expenses seven programs offer either automatic eligibility for differential tax assessment or property tax credits to farmers who enroll in agricultural districts.

Some states encourage local planning by limiting district authorization to jurisdictions with comprehensive or farmland protection plans, requiring the adoption of land use regulations to pro-

tect farmland, involving planning bodies in the development and approval of districts, and limiting non-farm development in and around agricultural districts.

Agricultural district laws are intended to stabilize the land base and to support the business of farming by providing farmers with an attractive package of incentives.

### HISTORY

In 1965, California enacted the California Land Conservation Act to preserve agricultural land and open space and promote efficient urban growth patterns. The Williamson Act, as it is commonly known, allows landowners within locally designated "agricultural preserves" to sign renewable 10-year contracts with local governments. Landowners agree to restrict use of property within preserves to agriculture or open space for the term of the contract. In return, the land is assessed at its agricultural use value, providing participants with significant property tax relief.

The New York Legislature created a comprehensive agricultural district program in 1971. Article 25 AA of the New York Agriculture and Markets Law made differential assessment available to New York farmers. The program also contained provisions that have been incorporated into other agricultural district laws, including protection against unreasonable local regulations, special review of the use of eminent domain and a requirement that state agency policies support the continuation of farming in agricultural districts.

Between 1971 and 1995, 14 other states and one region followed the examples set by California and New York. Agricultural district programs continue to evolve.

In 1992, amendments to the New York law reconstituted and strengthened local agricultural advisory committees, added new right-to-farm protections and required local governments to recognize the intent of the agricultural districts law when making local land use decisions. New

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## PROVISIONS OF AGRICULTURAL DISTRICT LAWS

PROVISION	Programs with Provision	Calif.	Del.	Ill.	I
Limits on use of eminent domain <sup>a</sup>	12	▲			
Limits on non-farm development	12	▲	▲	▲	▲
State agency policies must support farming	12	▲	▲	▲	▲
Local planning requirement <sup>b</sup>	11	▲			▲
Limits on special assessments	11	△		▲	▲
Farmers receive extra right-to-farm protection	10		▲	▲	
Limits on public investment for non-farm development	7	▲			
Sound conservation practices required	7			▲	
Strong sanctions on withdrawal from districts	6	▲			
Agricultural impact statement required for public projects	6				▲
Farmers are automatically eligible for differential assessment <sup>c</sup>	5	▲	❖		
Public utilities exempted from limits on eminent domain	5				
Local governments compensated for taxes reduced by differential assessment	4	▲			
Limits on local governments' ability to annex land	4	△			
Protection from siting of public facilities (e.g., schools and solid waste mgt. facilities)	3	△		▲	
Enrollment required to be eligible for agricultural easement acquisition program	3		▲		
Landowners adjacent to districts must sign agricultural nuisance disclaimer	3		▲		
Land Evaluation and Site Assessment (LESA) system used to define boundaries of district	2		▲		
Landowner consent required prior to adoption of more restrictive zoning	2				
Enrolled land gets priority in water rights allocation	2				
Public entities have right of first refusal to purchase land	2				
Farmer can recover legal fees if he/she wins nuisance lawsuit	2		▲		
Mediation required for land use disputes	2				⌘
Soil and water conservation cost sharing for farmers	2				
Land use controls on adjacent land must consider districts	1				
Farmers are automatically eligible for annual per acre property tax credit	1				
Limits on rate of property tax increases	1				
Buffer strips required for development adjacent to districts	1		▲		
Initial term of enrollment (in years)	16	10/20**	10	10	3
Minimum acreage requirement	16	100	200	350	300

<sup>a</sup> The degree of protection varies significantly from state to state. Minn. and N.J. prohibit eminent domain; Pa. and Utah can prohibit eminent domain, subject to review by state officials; Calif., Ky., Minn.-metro, N.Y., Ohio, Tenn. and Va. cannot prohibit eminent domain, but may require prior notification, agricultural impact statements, alternative proposals and/or public hearings.

<sup>b</sup> Planning requirements vary among states. Calif., Minn. and Minn.-Metro require plans (i.e., comprehensive or agricultural land preservation) to be eligible to establish districts, and zoning or other "official controls" to protect farmland. Md., N.J., N.Y., Pa., Utah, Va. and Va.-Local involve planning bodies in the development and approval of districts. Iowa requires that counties create land use inventories prior to establishment of districts.

<sup>c</sup> In Calif., farmers who sign an FSZ contract receive additional property tax relief.

Ky.	Md.	Mass.	Minn. State	Minn. Metro	N.J.	N.Y.	N.C.	Ohio	Pa.	Tenn.	Utah	Va. State	Va. Local
▲			▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	
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▲ Provision included in program.

△ Benefit provided only to landowners who sign FSZ contracts in Calif., and landowners in "municipally approved" districts in N.J.

❖ Land enrolled in districts is exempt from all but agricultural property taxes.

⌘ Provision included but never implemented.

■ Minimum acreage requirement established by local entity.

\* Only farms receiving grants for soil and water conservation projects must have an approved conservation plan.

\*\* The initial term is 10 years for Williamson Act contracts and 20 years for FSZ contracts. Each year, contracts automatically are extended for one year unless a notice of non-renewal is submitted.

## AGRICULTURAL DISTRICT PROGRAMS

*For additional information on agricultural district programs and other farmland protection programs, the Farmland Information Center offers publications, an on-line library and technical assistance. To order Agricultural District Programs: What Works, a 22-page comprehensive technical report (\$9.95), or other AFT publications, call (800) 370-4879. The farmland information library is a searchable database of literature, abstracts, statutes, maps, legislative updates and other useful resources. It can be reached at <http://www.farmlandinfo.org>. For additional assistance on specific topics, call the technical assistance service at (800) 370-4879.*

York state added a nuisance disclaimer to its district law in 1998, and a requirement that enrolled farmers apply sound conservation practices.

A 1994 amendment to California's Williamson Act made it more difficult for local governments to acquire land in agricultural preserves for public use. In 1998, California passed a new law that authorized the creation of Farmland Security Zones (FSZ). Farmers who elect to sign a 20-year FSZ contract receive expanded district benefits, including a 35 percent reduction in property tax assessments on top of values calculated under Williamson Act contracts, and protection from annexation and school sitings on agricultural land.

In 1997, Utah added provisions requiring that landowners adjacent to districts sign a nuisance disclaimer; in 1998, local planning and minimum acreage requirements were added.

In 1998, the Iowa State Supreme Court ruled that the right-to-farm provision contained within Iowa's agricultural districts law constituted a taking of property rights without compensation. The court found that the provision, which immunized farms in agricultural districts from nuisance lawsuits, amounted to an interest in, or easement on, adjacent land without payment of just compensation.

In 2000, Kentucky placed limits on special assessments on land enrolled in districts. Virginia's state district law also was amended in 2000 to include significant economic consequences for early withdrawal from the program.

### FUNCTIONS & PURPOSES

Agricultural district programs are intended to be comprehensive responses to the challenges facing farmers in developing communities. They can be designed to protect agricultural land, head off land conflicts, reduce farm operating expenses and encourage local planning.

### ISSUES TO ADDRESS

- Who will be eligible to enroll land in an agricultural district?
- What are the procedures for enrollment?
- What are the incentives for enrollment?
- What restrictions, if any, are placed on land enrolled in an agricultural district?
- How easy--or difficult--is it to withdraw land from an agricultural district?
- Who has the authority to terminate agricultural district agreements?

### BENEFITS

- Enrollment in agricultural districts is voluntary, making the programs popular with farmers.
- Agricultural district programs are very flexible; benefits and restrictions can be tailored to meet local objectives.
- Agricultural districts provide multiple benefits to farmers, including tax relief, protection from local regulation and eligibility for PACE programs.
- Agricultural districts help secure a critical mass of land to keep farming viable.

### DRAWBACKS

- Sanctions for withdrawing land from agricultural districts may not be strong enough to discourage conversion.
- Limits on non-farm development may not prevent expansion of public services such as water and sewer lines into agricultural areas. Some agricultural district laws address this issue; others do not.
- In some states, the benefits provided by agricultural districts are not enough incentive for farmers to enroll.
- In some states, the procedure for creating agricultural districts is lengthy and complex.



# FACT SHEET

## AGRICULTURAL

## PROTECTION

## ZONING



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### DESCRIPTION

Agricultural protection zoning refers to county and municipal zoning ordinances that support and protect farming by stabilizing the agricultural land base. APZ designates areas where farming is the desired land use, generally on the basis of soil quality as well as a variety of locational factors. Other land uses are discouraged. APZ ordinances vary in what activities are permitted in agricultural zones. The most restrictive regulations prohibit any uses that might be incompatible with commercial farming. The density of residential development is limited by APZ. Maximum densities range from one dwelling per 20 acres in the eastern United States to one residence per 640 acres in the West.

In practice, the specific areas designated by APZ are generally called agricultural districts. In the context of farmland protection, however, these zoning districts, which are imposed by local ordinances, are easily confused with voluntary agricultural districts created by farmers under statutes in 16 states. To avoid confusion, American Farmland Trust refers to the mandatory agricultural areas as agricultural protection zones, and the voluntary areas as agricultural districts.

APZ ordinances contain provisions that establish procedures for delineating agricultural zones and defining the land unit to which regulations apply. They specify allowable residential densities and permitted uses, and sometimes include site design and review guidelines. Some local ordinances also contain right-to-farm provisions and authorize commercial agricultural activities, such as farm stands, that enhance farm profitability. Occasionally, farmers in an agricultural protection zone are required to prepare conservation or farm management plans.

The definition of APZ varies with jurisdiction and by region of the country. A minimum lot size of 20 acres, combined with other restrictions, may be sufficient to reduce development pressures in areas where land is very expensive and

farming operations are relatively intensive. Several county APZ ordinances in Maryland permit a maximum density of one unit per 20 acres. In areas where land is less expensive and extensive farming operations such as ranches predominate, much lower densities may be required to prevent fragmentation of the land base. In Wyoming and Colorado, counties are not permitted to control subdivision of lots that are larger than 35 acres. The 35-acre provision has led to the creation of hundreds of 35-acre "ranchettes" in both states, fragmenting ranches into parcels that are too small for successful commercial ranching.

Many towns and counties have agricultural/residential zoning that allows construction of houses on lots of one to five acres. Although these zoning ordinances permit farming, their function is more to limit the pace and density of development than to protect commercial agriculture. In fact, such ordinances often hasten the decline of agriculture by allowing residences to consume far more land than necessary. AFT defines APZ as ordinances that allow no more than one house for every 20 acres, support agricultural land uses and significantly restrict non-farm land uses.

### HISTORY

The courts first validated zoning as a legitimate exercise of police power in the 1920s, giving local governments broad authority to regulate local land use. Rural counties in California, Pennsylvania and Washington began using zoning to protect agricultural land from development during the mid-1970s. In 1981, the National Agricultural Lands Study reported 270 counties with agricultural zoning. In 1995, an informal AFT survey found nearly 700 jurisdictions in 24 states with some form of APZ.

### FUNCTIONS & PURPOSES

APZ helps towns and counties reserve their most productive soils for agriculture. It stabilizes the agricultural land base by keeping large tracts of land relatively free of non-farm development,

## AGRICULTURAL PROTECTION ZONING

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thus reducing conflicts between farmers and their non-farming neighbors. Communities also use APZ to conserve a “critical mass” of agricultural land, enough to keep individual farms from becoming isolated islands in a sea of residential neighborhoods. Maintaining a critical mass of agricultural land and farms allows the retention of an agricultural infrastructure and support services, such as equipment dealers and repair facilities, feed mills, fertilizer and pesticide suppliers, veterinarians, spraying and seeding contractors, food processors and specialized financial services. All of these agricultural businesses need their farm customers to stay profitable.

APZ can also limit land speculation, which drives up the fair market value of farm and ranch land. By restricting the development potential of large properties, APZ is intended to keep land affordable to farmers. A strong ordinance can demonstrate to farmers that the town or county sees agriculture as a long-term, economically viable activity, instead of an interim land use.

Finally, APZ helps promote orderly growth by preventing sprawl into rural areas, and benefits farmers and non-farmers alike by protecting scenic landscapes and maintaining open space.

### BENEFITS

- APZ is an inexpensive way to protect large areas of agricultural land.
- By separating farms from non-agricultural land uses, APZ reduces the likelihood of conflicts between farmers and non-farming neighbors.
- APZ helps prevent suburban sprawl and reduces infrastructure costs.
- Compared to purchase of conservation easement and transfer of development rights programs, APZ can be implemented relatively quickly.
- APZ is easy to explain to the public because most landowners are familiar with zoning.

- APZ is flexible. If economic conditions change the zoning can be modified as necessary.

### DRAWBACKS

- APZ is not permanent. Changes in APZ ordinances can open up large areas of agricultural land for development.
- APZ can reduce land values, which decreases farmers’ equity in land. For this reason, farmers sometimes oppose APZ, making it difficult to enact.
- APZ may be difficult to monitor and enforce on a day-to-day basis.
- County APZ ordinances do not protect agricultural land against annexation by municipalities.

Source: American Farmland Trust, *Saving American Farmland: What Works* (Northampton, Mass., 1997).





# FACT SHEET

## DIFFERENTIAL ASSESSMENT AND CIRCUIT BREAKER TAX PROGRAMS



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### DESCRIPTION

Tax incentives are widely used to maintain the economic viability of farming. All states have at least one program designed to reduce the amount of money farmers are required to pay in local real property taxes.

The most important type of agricultural tax program is known as differential assessment. Every state except Michigan has a differential assessment program that allows local officials to assess farmland at its agricultural use value, rather than its fair market value, which is generally higher. Agricultural use value represents what farmers would pay to buy land in light of the net farm income they can expect to receive from it. Full fair market value represents the amount a willing buyer—whether farmer or developer—would pay for the land. Differential assessment is also known as current use assessment and use value assessment.

Three states—Michigan, New York and Wisconsin—allow farmers to claim state income tax credits to offset their local property tax bills. These programs are called “circuit breakers” because they relieve farmers of real property taxes that exceed a certain percentage of their income. Iowa offers a credit against school taxes on agricultural land. While circuit breaker programs are not widespread, they are receiving increasing attention from state governments looking for ways to relieve farmers’ tax burden.

### HISTORY

Iowa’s Agricultural Land Credit Fund, established in 1939, was the first state program to provide farmers with relief from property taxes. Maryland enacted the nation’s first differential assessment law in 1956. Between 1959 and 1969, 20 other states adopted differential assessment legislation. Michigan adopted its circuit breaker tax relief program in 1974. By 1989, all 50 states had at least one type of agricultural tax program for farmland owners, and several states had more than one program.

As the value of farmland has risen, states have expanded their agricultural tax programs. Michigan adopted a special tax rate for farmland as part of its comprehensive property tax reform legislation in 1994. Wisconsin created a differential assessment program to supplement its circuit breaker program in 1995, and New York supplemented its differential assessment program with a circuit breaker program in 1996.

### FUNCTIONS & PURPOSES

Differential assessment laws and circuit breaker tax relief programs have three purposes: to help farmers stay in business by reducing their real property taxes; to treat farmers fairly by taxing farmland based on its value for agriculture, rather than at fair market value as if it were the site of a housing development; and to protect farmland by easing the financial pressures that force some farmers to sell their land for development.

As agricultural land is developed, property values rise. As new residents and businesses move to rural areas, local governments often raise property tax rates to support increased demand for public services. Tax rates that are based on the value of agricultural land for residential or commercial development do not reflect the current use of the land, nor farmers’ ability to pay. Increasing property values and the corresponding rise in taxes can reduce farm profitability.

High land values also make it more difficult for farmers to increase profits by expanding their operations. The combination of expensive real estate and high taxes creates strong economic incentives for farmers to stop farming and sell land for development. Differential assessment and circuit breaker programs help ensure that farmers who want to continue farming will not be forced to sell land just to pay their tax bills.

Differential assessment and circuit breaker programs also help correct inequities inherent in local property tax systems. Property taxes are assessed on a per-acre basis, and farmers are

## DIFFERENTIAL ASSESSMENT AND CIRCUIT BREAKER TAX PROGRAMS

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often the largest landowners in rural communities. The amount of land a farm family owns, however, does not reflect the cost of services they receive from local government. Studies show that farmland owners pay more in taxes than the value of the public services they receive from local governments, while homeowners receive more services than their taxes pay for.

### BENEFITS

- Agricultural tax programs help farmers stay in business by lowering their expenses.
- Agricultural tax programs help correct inequities in the tax system.

### DRAWBACKS

- Agricultural tax programs do not ensure long-term protection of farmland.
- Differential assessment programs often provide a subsidy to real estate speculators, who are keeping their land in agriculture pending development.

Source: American Farmland Trust, *Saving American Farmland: What Works* (Northampton, Mass., 1997).



# FACT SHEET

## RIGHT-TO- FARM LAWS

### DESCRIPTION

Right-to-farm laws are designed to accomplish one or both of the following objectives: (1) to strengthen the legal position of farmers when neighbors sue them for private nuisance; and (2) to protect farmers from anti-nuisance ordinances and unreasonable controls on farming operations. Most laws include a number of additional protections. Right-to-farm provisions may also be included in state zoning enabling laws, and farmers with land enrolled in an agricultural district may have stronger right-to-farm protection than other farmers. A growing number of counties and municipalities are passing their own right-to-farm legislation to supplement the protection provided by state law.

The common law of nuisance forbids individuals from using their property in a way that causes harm to others. A private nuisance refers to an activity that interferes with an individual's reasonable use or enjoyment of his or her property. A public nuisance is an activity that threatens the public health, safety or welfare, or damages community resources, such as public roads, parks and water supplies.

A successful nuisance lawsuit results in an injunction, which stops the activity causing the nuisance, provides monetary compensation, or both. In a private nuisance lawsuit involving complaints against a farming operation, the court must decide whether the farm practices at issue are unreasonable. To make this decision, courts generally weigh the importance of the activity to the farmer against the extent of harm to the neighbor or community, taking into account the following factors:

- The degree of harm and its duration, permanence and character: Is it continuous or sporadic? Is it a threat to health, or simply a minor annoyance?
- The social value that state and local law places on both farming and the type of neighboring use that has been harmed;

- The suitability of the two sets of uses to the character of the locality; and
- The ease with which the neighbor could avoid the harm, and the farmer's ability to prevent or minimize the undesirable external effects of the farming operation.\*

One of the most important issues is whether the person bringing the lawsuit should have been able to anticipate the problem, and thus has assumed the risk of injury. If the farm was in operation before the person with the complaint moved to the neighborhood, the farmer may argue that the plaintiff "came to the nuisance." In most states, "coming to the nuisance" does not necessarily prevent farm neighbors from winning in court, but a farmer usually has a stronger legal case if his or her operation was there before the plaintiff moved to the area. Right-to-farm laws give farmers a legal defense against nuisance suits; the strength of that defense depends on the provisions of the law and the circumstances of the case.

### HISTORY

Between 1963, when Kansas enacted a law to protect feedlots from litigation, and 1994, when Utah included right-to-farm protections in its agricultural district law, every state in the Union enacted some form of right-to-farm law. Several states have enacted two types of right-to-farm legislation, and Minnesota and Iowa have enacted three.

### FUNCTIONS & PURPOSES

Right-to-farm laws are intended to discourage neighbors from suing farmers. They help established farmers who use good management practices prevail in private nuisance lawsuits. They document the importance of farming to the state or locality and put non-farm rural residents on notice that generally accepted agricultural practices are reasonable activities to expect in farming areas. Some of these laws also limit the ability of newcomers to change the local rules that govern farming.



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Local right-to-farm laws often serve an additional purpose: They provide farm families with a psychological sense of security that farming is a valued and accepted activity in their communities.

## RIGHT-TO- FARM LAWS

\* American Law Institute, Restatement of Torts (Second) (St. Paul, Minn., 1982), Sections 827-828.

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Source: American Farmland Trust, *Saving American Farmland: What Works* (Northampton, Mass., 1997).



# FACT SHEET

## GROWTH

## MANAGEMENT

## LAWS



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### DESCRIPTION

Growth management laws are designed to control the timing, phasing and character of urban growth. They take a comprehensive approach to regulating the pattern and rate of development and set policies to ensure that most new construction is concentrated within designated urban growth areas or boundaries (UGBs). They direct local governments to identify lands with high natural resource, economic and environmental value and protect them from development. Some growth management laws require that public services such as water and sewer lines, roads and schools be in place before new development is approved. Others direct local governments to make decisions in accordance with comprehensive plans that are consistent with plans for adjoining areas.

Most growth management programs are established at the state level and may apply to the entire state, high-growth counties or a particular region. Growth management also may be used to guide development at the county and municipal level. Growth management laws can protect farmland by channeling new development away from important agricultural areas.

At least 12 states have growth management statutes, but only seven - Hawaii, Maryland, Minnesota, New Jersey, Oregon, Vermont and Washington - address the issue of farmland conversion. These seven laws vary in the controls that they impose on state and local governments and in the extent to which they protect agricultural land from development.

### HISTORY

In 1961, Hawaii became the first state to experiment with statewide land use planning when it created four zoning districts that covered all of the land in the state. One of the four zones was dedicated to agriculture.

Vermont's Act 250, approved in 1970, requires state review of commercial, industrial and residential development projects that meet the act's criteria. Developers must minimize the loss of primary agricultural soils. Vermont passed another state planning act in 1988.

In 1972, Oregon enacted one of the nation's strongest growth management laws. Its 1972 Land Conservation and Development Act directed county officials to inventory farmland and designate it for agriculture in their comprehensive plans. County governments were required to enact exclusive agricultural protection zoning and adopt other farmland protection policies. City governments were required to establish urban growth boundaries.

Washington's Growth Management Act was adopted in 1990 and strengthened in 1991. The law requires all counties to designate important agricultural land and adopt regulations to ensure that land uses adjacent to farms and ranches do not interfere with agricultural operations. Fast-growing counties and their cities must prepare comprehensive plans that protect natural resource areas. Counties required to plan under the act also are required to designate urban growth areas to accommodate projected urban growth over 20 years. In general, urban services may not be extended beyond the boundaries of urban growth areas.

The New Jersey State Development and Redevelopment Plan, released in 1992, is designed to accommodate urban growth by directing it to defined urban areas. It provides a statewide framework that is intended to guide the investment policies of state agencies.

The Maryland Economic Growth, Resource Protection, and Planning Act of 1992 outlines a set of policies to guide growth. It calls for protection of natural resources, including agricultural

## GROWTH MANAGEMENT LAWS

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land, and for growth to be directed to existing population centers. State projects must be consistent with those policies. Local governments were required to adopt new comprehensive plans and revise their zoning and subdivision ordinances to implement the policies. In 1997, the state Legislature enacted the Smart Growth Areas bill, which directs state funding to areas targeted for development.

Minnesota's 1997 Community-Based Planning Act sets 11 goals for developing local and regional plans. Farmland protection is included as part of a goal to protect, preserve and enhance the state's resources. Local governments are encouraged, rather than required to develop comprehensive plans in accordance with the provisions of the law.

### FUNCTIONS & PURPOSES

Growth management laws can result in the designation of lands with high resource value, such as prime farmland, and protect them from inappropriate development. They encourage "smart growth" by directing local governments to designate areas and prepare plans for different types of land uses. Urban growth boundaries encourage orderly growth and let the building industry know where public infrastructure will be provided for residential and commercial development.

Some growth management laws encourage or require local governments to develop comprehensive plans that are both internally consistent and consistent with the plans of neighboring jurisdictions. This provision helps ensure that different government agencies in different communities are working toward the same goals. Laws that control the pace of development help guarantee that new homes and businesses have adequate water, sewer, police, fire, education and transportation services.

### BENEFITS

- State and regional growth management laws transcend local boundaries and can create incentives for many jurisdictions to work toward common goals.
- Growth management laws allow state and local governments to protect large blocks of agricultural land with a single legislative vote.
- Growth management laws can provide incentives for development in and around areas that are already urban in character while discouraging the use of productive farmland for non-agricultural uses.
- Growth management laws can save communities money by preventing sprawling developments that are costly to serve.

### DRAWBACKS

- It is often difficult to win the political approval required to pass state growth management laws.
- Regional planning is especially controversial in many states and may be strongly opposed by local governments.
- Growth management laws are complex and generally take a long time to implement.
- Many growth management laws do not have a strong farmland protection component.



### 3. Ag. Conservation Easements



# FACT SHEET

## AGRICULTURAL CONSERVATION EASEMENTS



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### DESCRIPTION

A conservation easement is a deed restriction landowners voluntarily place on their property to protect resources such as productive agricultural land, ground and surface water, wildlife habitat, historic sites or scenic views. They are used by landowners ("grantors") to authorize a qualified conservation organization or public agency ("grantee") to monitor and enforce the restrictions set forth in the agreement.

Conservation easements are flexible documents tailored to each property and the needs of individual landowners. They may cover an entire parcel or portions of a property. The landowner usually works with the prospective grantee to decide which activities should be limited to protect specific resources.

Agricultural conservation easements are designed to keep land available for farming.

### RESTRICTIONS

In general, agricultural conservation easements limit subdivision, non-farm development and other uses that are inconsistent with commercial agriculture. Some easements allow lots to be reserved for family members. Typically, these lots must be small—one to two acres is common—and located on the least productive soils. Agricultural conservation easements often permit commercial development related to the farm operation and the construction of farm buildings. Most do not restrict farming practices, although some grantees ask landowners to implement soil and water conservation plans. Landowners who receive federal funds for farm easements must implement conservation plans developed by the USDA Natural Resources Conservation Service.

### TERM OF THE RESTRICTIONS

Most agricultural conservation easements are permanent. Term easements impose restrictions for a specified number of years. Regardless of the duration of the easement, the agreement is legally binding on future landowners for the agreed-upon time period. An agricultural conservation easement can be modified or terminated by a court of law if the land or the neighborhood changes and the conservation objectives of the easement become impossible to achieve. Easements may

also be terminated by eminent domain proceedings.

### RETAINED RIGHTS

After granting an agricultural conservation easement, landowners retain title to their property and can still restrict public access, farm, use the land as collateral for a loan or sell their property. Land subject to an easement remains on the local tax rolls. Landowners continue to be eligible for state and federal farm programs.

### VALUATION

Landowners can sell or donate an agricultural conservation easement to a qualified conservation organization or government body. In either case, it is important to determine the value of the easement to establish a price or to calculate tax benefits that may be available under federal and state law. The value of an agricultural conservation easement is generally the fair market value of the property minus its restricted value, as determined by a qualified appraiser. In general, more restrictive agreements and intense development pressure result in higher easement values.

### TAX BENEFITS

Grantors can receive several tax advantages. Donated agricultural conservation easements that meet Internal Revenue Code section 170 (h) criteria are treated as charitable gifts. Term easements do not qualify. Donors can deduct an amount equal to up to 30 percent of their adjusted gross income in the year of the gift. Corporations are limited to a 10-percent deduction. Easement donations in excess of the annual limit can be applied toward federal income taxes for the next five years, subject to the same stipulations. Most state income tax laws provide similar benefits.

Some state tax codes direct local tax assessors to consider the restrictions imposed by a conservation easement. This provision generally lowers property taxes on restricted parcels if the land is not already enrolled in a differential assessment program. Differential assessment programs direct local tax assessors to assess land at its value for agriculture or forestry,

## AGRICULTURAL CONSERVATION EASEMENTS

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rather than its “highest and best” use, which is generally for residential, commercial or industrial development.

The donation or sale of an agricultural conservation easement usually reduces the value of land for estate tax purposes. To the extent that the restricted value is lower than fair market value, the estate will be subject to a lower tax. In some cases, an easement can reduce the value of an estate below the level that is taxable, effectively eliminating any estate tax liability. However, as exemption levels increase, there may be less incentive from an estate tax perspective.

Recent changes to federal estate tax law, enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001, expanded an estate tax incentive for landowners to grant conservation easements. The new law removes geographic limitations for donated conservation easements eligible for estate tax benefits under Section 2031(c) of the tax code.

Executors can elect to exclude 40 percent of the value of land subject to a donated qualified conservation easement from the taxable estate. This exclusion will be \$500,000 in 2002 and thereafter. The full benefit offered by the new law is available for easements that reduce the fair market value of a property by at least 30 percent. Smaller deductions are available for easements that reduce property value by less than 30 percent.

### HISTORY

Every state has a law pertaining to conservation easements. The National Conference of Commissioners on Uniform State Laws adopted the Uniform Conservation Easement Act in 1981. The Act served as a model for state legislation allowing qualified public agencies and private conservation organizations to accept, acquire and hold less-than-fee simple interests in land for the purposes of conservation and preservation. Since the Uniform Conservation Easement Act was approved, 21 states have adopted conservation easement enabling laws based on this model and 23 states have drafted and enacted their own enabling laws.

Accepting donated conservation easements is one of the major activities of land trusts. Land trusts exist in all 50 states. They monitor and

enforce the terms of easements. Some also purchase conservation easements.

### BENEFITS

- Conservation easements permanently protect important farmland while keeping the land in private ownership and on local tax rolls.
- Conservation easements are flexible, and can be tailored to meet the needs of individual farmers and ranchers and unique properties.
- Conservation easements can provide farmers with several tax benefits including income, estate and property tax reductions.
- By reducing nonfarm development land values, conservation easements help farmers and ranchers transfer their operations to the next generation.

### DRAWBACKS

- While conservation easements can prevent development of agricultural land, they do ensure that the land will continue to be farmed.
- Agricultural conservation easements must be carefully drafted to ensure that the terms allow farmers and ranchers to adapt and expand their operations and farming practices to adjust to changing economic conditions.
- Donating an easement is not always a financially viable option for landowners.
- Monitoring and enforcing conservation easements requires a serious commitment on the part of the easement holder.
- Subsequent landowners are not always interested in upholding easement terms.
- Conservation easements do not offer protection from eminent domain. If land under easement is taken through eminent domain, both the landowner and the easement holder must be compensated.



American Farmland Trust

## **Examples of Agricultural Easement Language**

**Land Trust Alliance Rally  
Pre-Conference Workshop  
Snowmass, Colorado**

**October 1999**

**Compiled by:  
Judy Anderson, Columbia Land Conservancy  
Jerry Cosgrove, American Farmland Trust**

Based on the belief that a working, commercially-viable, agricultural landscape is the desired long-term land use, and that the soil resource is the foundation for agricultural protection, conservation organizations are realizing that agricultural easements, compared to scenic open space or historic easements, are very different.

In general, agricultural easements recognize the farmer's need to be able to respond to a changing agriculture and are written with the knowledge that farmers, perhaps more than any other group of landowners, must make countless decisions on a daily basis about how they work the land, and respond to new market conditions. Timing and flexibility can be critical when deciding if they need to construct a new fence, plant a particular crop, apply nutrients and chemicals, construct or renovate a building, or subdivide or acquire a parcel of land.

We have identified a number of concepts where we have found a variety of approaches within agricultural easements. The following excerpts have been drawn from numerous agricultural easements across the country.

### **1. Purpose Clauses.**

#### **A. Agriculture as the primary purpose.**

"This grant of easement in the nature of a Restriction on the use of land for the purpose of preserving productive agricultural land is made this \_\_\_\_ day of \_\_\_\_, 1997 by and between..."

#### **B. Agricultural and natural resource conservation with equal value.**

1. "By obtaining this Agricultural Preservation Restriction, it is the intent of the Commonwealth to perpetually protect and preserve agricultural lands, encourage sound soil management practices in accordance with normally accepted agricultural practices, preserve natural resources, maintain land in active agricultural use, and ensure affordable resale values of agricultural land."

2. "It is the purpose of this Agreement to preserve the open space, natural, scenic and agricultural values of the Property and to prevent any uses of the Property that will significantly impair or interfere with those values. This purpose, as further defined by the provisions of this Agreement, is generally referred to collectively herein as "the conservation purpose of this Agreement." Grantor intends that this Agreement will confine the uses of the Property to the following, which are consistent with the conservation purpose of this Agreement: [(a) residential and other improvements associated therewith; (b) agricultural; and (c) management and conservation of natural resources]..."

C. "Agriculture" as primary, with "scenic" if it does not conflict.

1. "It is the purpose of this Easement to enable the Property to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural values, character, use and utility, and to prevent any use of the Property that would significantly impair or interfere with its agricultural value, character, use or utility. To the extent that the preservation of the open space and scenic values of the Property is consistent with such use, it is within the purpose of this Easement to protect those values."

2. "It is the primary purpose of this Agricultural Conservation Easement to enable the Property to remain in agricultural use by preserving and protecting its agricultural soils and agricultural viability and productivity. No activity which shall significantly impair the actual or potential agricultural use of the Property shall be permitted. To the extent that the preservation and protection of the natural, historic, recreational, habitat or scenic values referenced in this Easement are consistent with the primary purpose stated above, it is within the purpose of this Easement to also protect those values, and no activity which shall significantly impair those values shall be permitted."

D. Agricultural as primary, scenic and natural resources secondary.

"Grantor and Grantees acknowledge that the Purposes of this Grant are as follows (hereafter "Purpose of Grant"): 1) Consistent with the goals set forth in [state statute], the primary purpose of this Grant is to conserve productive agricultural and forestry lands in order to facilitate active and economically viable farm use of the Protected Property now and in the future; 2) As a secondary objective, to conserve scenic and natural resources associated with the Protected Property, to improve the quality of life of [state residents], and to maintain for the benefit of future generations the essential characteristics of the [state] countryside [add recreational or educational goals as relevant]; 3) these objectives will be advanced by conserving the Protected Property because it possesses the following attributes: [relevant to each farm property, include agricultural or forestry values (soils), natural areas, wetlands, and habitats; historic features; rivers, streams or ponds; trails or paths used by the public; visibility of the property from public places; proximity to public or other protected lands; and any other relevant features of the property]."

## **2. Defining "Agriculture".**

A. Easement is silent on defining agriculture. The easement does not mention the definition of agriculture. The interpretation is left to the easement reader, Grantor, and Grantee.

B. Easement uses agricultural agency-based standard (N.R.C.S. or state Agriculture Department).

"Grantor has the right to produce crops, livestock and livestock products and conduct farm operations as defined under Section \_\_\_\_ of the [state agricultural law], or such successor law as is later promulgated, which includes but is not limited to the right to establish, reestablish, maintain, and use cultivated fields, orchards, and pastures. Said farming practices shall be carried out in accordance with sound agricultural practices pursuant to Section \_\_\_\_ of the [state law], or such successor law as is later promulgated, together with the right to construct, maintain and repair unpaved access roads for these purposes."

C. Easement uses general broad description.

"[Grantor reserves to himself, and to his heirs, successors and assigns,...] (b) To engage in any and all agricultural uses of the Property in accordance with sound, generally accepted agricultural practices consistent with Paragraphs 3 \_\_\_\_\_. For the purposes of this Easement, "agricultural uses" shall be defined as: breeding, raising, pasturing and grazing livestock of every nature and description, breeding and raising bees, fish, poultry and other fowl; planting, raising, harvesting and producing agricultural, aquacultural, horticultural and forestry crops and products of every nature and description; and the primary processing, storage, and sale, including direct retail sale to the public of crops and products harvested and produced principally on the Property."

## **3. Farming Practices, "Sound Agricultural Practices".**

A. Easement is silent.

B. Easement uses standards which will change over time, reflect agricultural community.

1. "As defined in Section \_\_\_\_ of the [state] Agricultural and Markets Law, as amended, sound agricultural practices refer to those practices necessary for the on-farm production, preparation and marketing of agricultural commodities. Such practices shall be evaluated by the commissioner of Agricultural and Markets, upon request, on a case-by-case basis."

2. "All agricultural production on the subject land shall be conducted in accordance with a conservation plan approved by the County Conservation District or the County Board. Such plan shall be updated every ten years and upon any change in the basic type of agricultural production being conducted on the subject land. In addition to the requirements established by the County Conservation District or the County Board, the conservation plan shall require that: a) The use of the land for growing sod, nursery stock, ornamental trees, and shrubs does not remove excessive soil for the subject land, and b) The excavation of soil, sand, gravel, stone or other materials for use in agricultural production on the land is conducted in a location and manner that preserves the viability of the subject land for agricultural production."



3. "All farming operations shall be conducted in a manner consistent with the conservation practices recommended by the Natural Resource Conservation Service, or other qualified agricultural consultant, that address soil and water conservation, pest management, nutrient management and habitat protection."

**4. Residential Structures.**

**A. Include residential structure(s) in designated locations, as referenced in the easement.**

1. [Permitted uses:] "To construct or place no more than \_\_\_\_ (within the area delineated as "Ag/Residential" on the Baseline Documentation Site Map) and associated access roads on the Property provided that Grantor shall deliver to District [Grantee] written request for approval of such construction or placement of \_\_\_\_ in accordance with the provisions set for in \_\_\_\_ of this Agreement. District's [Grantee's] approval shall be based upon its finding that the proposed construction or placement is consistent with the conservation purposes of this Agreement."

2. "Grantor has the right to repair or enlarge any or all of the \_\_\_\_ single-family residential dwellings existing within the [building envelope]. No more than \_\_\_\_ new single-family residential dwellings, together with customary appurtenances and non-habitable accessory structures may be constructed with the [building envelope]. The land on which these new residential dwellings stand [shall not be/may be] subdivided from the Property [depending on Property, type of farm operation, and landowner's wishes]."

**B. Allow for floating residential structure(s), to be located later, within the easement.**

1. "Residential use of the real property shall be limited to dwelling housing for the owner, relatives of the owner and persons providing permanent and seasonal farm labor services, provided, however, that any such dwelling housing shall be limited to usage of no more than 1 acre for each 20 acres of usable land owned in the Agricultural Preservation District, with a maximum of 10 acres of land being allowed for dwelling housing on an owner's land within a District. The Property consists of \_\_\_\_ acres, of which \_\_\_\_ acres are usable for agricultural and related uses. There are currently \_\_\_\_ acres used for dwelling housing on the Property, and only \_\_\_\_ additional acres for dwelling housing shall be allowed."

2. "...the Grantor may construct one Residence on the portion of the Property located east of [said road] as depicted on the [Baseline documentation map], in a location designated by Grantor and approved by Grantee, which approval shall not be unreasonably withheld. Grantee shall grant such approval within thirty (30) days of Grantor's request unless Grantee determines that the proposed Residence would be unnecessarily located on prime or unique soil, or would otherwise materially diminish the agricultural productivity of the Property...."

**C. Omit residential structures from the easement.**

Cut residential lots (frequently on 2-3 acres) out of the Property prior to placing the Property under a conservation easement.

## **5. Farm Housing (for employees or tenants).**

### **A. Allowed with permission.**

1. [The following activities shall not be conducted without the prior written approval of the Grantee, which may be granted in accordance with the procedures set forth in Section \_\_\_\_ of this Restriction] ..... “(1) The construction or placing of permanent structures for housing seasonal agricultural employees or other agriculturally related uses, including [related retail sales....]”

2. “All existing dwellings and structures used to house farm tenants and employees may be repaired, reasonably enlarged and replaced at their current location without further permission of Grantee. New single- or multi-family dwellings or structures to be used solely to house farm tenants, employees, or others engaged in agricultural production on the Property may be built only within the area identified and marked [building envelope] on Exhibit B [Baseline documentation map]. At the time that construction of such structures is to commence, Grantee shall be notified so that its records can be updated.”

### **B. Allowed within a designated area, without prior permission.**

1. “Grantor has the right to repair, enlarge or replace any or all dwellings or structures used to house farm tenants and/or employees within the [building envelope], (subject to applicable laws). New single- or multi-family dwellings or structures to be used solely to house farm tenants, employees or others engaged in agricultural production on the Property may be constructed within the [building envelope]. Existing non-habitable structures may be adaptively reused to create farm labor and/or tenant housing, subject to applicable laws. The land on which these structures stand shall not be subdivided from the [building envelope].”

2. “[Grantor has the] right to construct and maintain \_\_\_\_ additional farm labor housing unit(s), together with the necessary driveways, utilities and appurtenant structures or improvements normally associated with a residence, provided, however, that the farm labor housing unit(s) shall be occupied by at least one person who is a member of the Grantor’s family or who is employed on the farm. In the event the unit is not required for housing a farm employee or member of Grantor’s family, the Grantor may rent the unit to other persons for a lease term not to exceed one year. The farm labor housing unit(s) shall not be conveyed separately from the Protect Property, but may be subdivided with the prior written approval of Grantee if such subdivision is required by state or local regulation. No prior approval of Grantee shall be required for construction of any farm labor housing unit or appurtenance structure or improvement located within the [Building Envelope] described in the preceding paragraph, provided Grantor shall notify Grantee prior to commencing construction on any such housing unit, structure or improvement.”

### **C. Allowed without permission, if under size threshold and within the Building Envelope:**

“Farm Support Housing shall consist of apartments, single or multi-family dwellings, or other buildings, including trailers or mobile homes, to be used to house farm tenants, employees, seasonal employees, family members, or others engaged in agricultural production on the Property. All Farm Support Housing shall be located completely within the [Building Envelope] as shown on [Baseline Documentation] and shall be in

accordance with [septic laws and regulations]. Existing non-habitable buildings may be renovated to create Farm Support Housing. A total aggregate of {3,000 or 5,000} square feet of Farm Support Housing living space (depending on the number of [building envelopes]) is permitted within each [Building Envelope] with prior notice to Grantee.

The existing dwellings or buildings used for Farm Support Housing may be repaired and replaced at their current location without further permission from Grantee. Existing Farm Support Housing may be enlarged with prior notice to Grantee as described in [permission and notice section of easement]. New Farm Support Housing may be constructed, repaired, or enlarged, on the Property only within the area identified and marked as a [Building Envelope] on the [Baseline Documentation] with prior notice to Grantee as described in [permission and notice section of the easement]. Such housing shall be in compliance with [septic laws and regulations].

Grantor may enlarge or construct Farm Support Housing beyond the aggregate {5,000/3,000} square feet, within each of the [building envelope] as shown on the [Baseline Documentation], only with prior permission from Grantee as described in [the permission and notice section of the easement]. However, if Farm Support Housing is no longer needed for that purpose, the buildings may continue in residential use. Farm Support Housing, or their continuation into residential use, shall not be subdivided from the [Building Envelope] as further described in [subdivision section of easement].”

## 6. Agricultural Structures.

### A. Farmer decides.

“The construction or use of any building or other structure on the subject land other than as existing on the date of the delivery of this Deed is prohibited except that: ....(c) the construction or use of any building or structure for agriculture production is permitted.”

### B. Farmer decides, under a size threshold.

“Grantor may remove, repair or replace existing Agricultural Buildings and Improvements in the [majority of the Property] without prior permission of the Grantee. New Agricultural Buildings, or the enlargement of existing Agricultural Buildings, within the [majority of the Property] are permitted with prior notice to the Grantee to ensure such buildings’ construction does not exceed an aggregate total of 5,000 square feet. Grantor may enlarge or construct Agricultural Buildings in the [majority of the Property] greater than the aggregate 5,000 square foot threshold specified above only with the prior permission of Grantee [pursuant to permission section].”

### C. Farmer decides within the building envelope, permission necessary outside the building envelope.

“Grantor has the right to maintain, repair, and enlarge all existing buildings and improvements and to construct, maintain and repair new buildings and other improvements within the [Building Envelope]. Said structures shall be used solely for agricultural purposes or other purposes directly related thereto, including but not limited to the processing or sale of farm products, in accordance with sound agricultural practices as defined in Section \_\_ of the Agricultural and Markets Law, or such successor law as is later promulgated. Notwithstanding the provisions of this Section, said structures may be adaptively used for farm labor or tenant housing as defined in Section \_\_ herein, and/or

for non-agricultural home occupations or cottage industries as defined in Section \_\_\_\_ herein. The land on which these structures stand shall not be subdivided from ownership of the [Building Envelope], except as outline in Section \_\_\_\_ herein. ....

[under a different section in the easement the following applies:] Grantor has the right to construct, maintain and repair new buildings and other improvements solely for agricultural purposes within the Farm Area [the farm outside of the building envelope], and in accordance with sound agricultural practices as defined under Section \_\_\_\_ of the Agricultural and Markets Law, or such successor law as is later promulgated, with the advance written permission of Grantee. Grantee shall give written permission within 30 days of receipt of a request for such permission, provided that Grantor has supplied sufficient information to make such a determination, unless Grantee determines that the proposed building or structure would be unnecessarily located on prime and/or unique soils, or would otherwise significantly diminish the agricultural production capacity of the Property. Permission shall be deemed granted if no decision is communicated to Grantor within 30 days of the written request. The land on which these structures stand shall not be subdivided from ownership of the [building envelope] except as outline in Section \_\_\_\_ herein.”

D. Allowed with prior approval from Grantee.

“...Grantor shall have the right to make the following uses of the Protected Property:...the right to construct and maintain barns, sugar houses, or similar structures or facilities, together with necessary access drives and utilities, on the Protected Property, provided that they are used exclusively for agricultural or forestry purposes, and provided further that such construction has been approved in writing in advance by the Grantee. Grantee’s approval shall not be unreasonably withheld or conditioned, provided the structure or facility is located in a manner which is consistent with the Purposes of this [Easement] as stated in [the Purposes section of the easement], above.”

**7. Approval for agricultural construction and improvements. Can either be within subject sections, or within a separate “approval section”.**

- A. As-of-right, may need to *notify* Grantee. One of the more common approaches. Allows the farmer maximum ability to respond to market and farming demands.
- B. Prior permission from Grantee. Grantee granting permission based on a performance standard and turn-around time, i.e. if it does not impair or diminish the agricultural viability and water quality of the Property.
- C. Permission necessary over a size threshold. In other words, if a building is greater than 5,000 square feet, the Grantee would need to give permission based on a performance standard, as discussed above.

**8. Subdivision.**

A. Permitted with permission.

- 1. “The Property may be subdivided into no more than \_\_\_\_ residential dwelling lots [corresponding with the number of Building Envelopes] with prior permission from the

Grantee. However, under no circumstances shall any [Building Envelope] itself be subdivided. Non-residential subdivision of the Property is prohibited without the advance written permission of the Grantee. The Grantee shall not give such permission, unless the Grantor demonstrates to Grantee that the proposed subdivision will not otherwise substantially diminish or impair the agricultural productivity or water quality benefits of the Property. Farm Support Housing may not be sold or subdivided separately from the residential dwelling in the [Building Envelope] and parcel in which it is located."

2. "Agricultural subdivisions are subject to the prior written approval of the Grantee. Agricultural subdivisions shall be compatible with the "Subdivision Guidelines for Land Subject to an Agricultural Easement," published by the \_\_\_\_ County Farmland Preservation Board, 199\_\_, as revised. Such Guidelines are made a part hereof in the Baseline Documentation, which is on file at the office of the Grantee and is incorporated by this reference."

B. Permitted, without permission.

"The Property may not be subdivided so as to allow more than one (1) principal dwelling lot. This restriction shall not preclude lot line adjustments that do not create additional building lots, and shall not preclude the creation of other parcels for farming and open space on which no residential building is allowed. Notwithstanding, the [building envelope], as shown on [Baseline documentation map] and attached hereto may not be subdivided."

C. Residential subdivision prohibited, except small area around residential dwelling:

"Residential subdivisions are prohibited, except for one lot of no more than two (2) acres with the existing dwelling or additional permitted dwelling."

9. **Trash and Waste Disposal.**

1. "The dumping, land filling, or accumulation of any kind of waste on the Property, other than farm related waste or equipment generated on the Property that does not substantially diminish or impair the agricultural productivity and water quality benefits of the Property, is strictly prohibited. However, this shall not prevent the storage of agricultural products and byproducts on the Property, so long as it is done in accordance with sound agricultural practices, a current whole farm plan, and all applicable government laws and regulations."

2. "No refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, radioactive or hazardous waste or other substance or material whatsoever, shall be placed, stored, dumped or permitted to remain on the Premises, except as required for the use of the Premises for normal agricultural activities."

3. "No trash, refuse, vehicle bodies or parts, rubbish, debris, junk, waste, radioactive or hazardous waste, shall be placed, stored, dumped, buried or permitted to remain on the Property, except as reasonably required for the use of the Property for agricultural activities, and except as in accordance with applicable local, state and federal laws and



regulations. Materials located in dump sites existing as of the date of this Easement, as indicated on Exhibit B, may remain. The storage of agricultural products, byproducts and agricultural equipment on the Property, so long as such storage is done in accordance with all applicable government laws and regulations, is permitted.”

#### **10. Dispute Resolution/Arbitration.**

1. “If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, and Grantor agrees not to proceed with the use or activity with the purpose of this Easement, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to arbitration by request made in writing upon the other. Within thirty (30) days of the receipt of such a request, the parties shall select a single arbitrator to hear the matter.

If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator; provided, however, if either party fails to select an arbitrator, or if the two arbitrators selected by the parties fail to select their arbitrator within fourteen (14) days after the appointment of the second arbitrator, then in each such instance a proper court, on petition of a party, shall appoint the second or their arbitrator or both, as the case may be. A judgment on the arbitration’s award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, to without limitation, the fees and expenses of the arbitrator(s) and attorneys’ fees, which shall be determined by the arbitrator(s) and any court of competent jurisdiction that may be called upon to enforce or review the award.”

2. “If a dispute arises between the Grantor and Grantee concerning the consistency of any proposed use or activity with the purposes of this Easement or any of the specific provisions contained herein, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may request a meeting between the parties, or refer the dispute to a mediator knowledgeable about production agriculture and water quality protection to recommend potential resolution of the dispute. Reasonable costs associated with the mediation process shall be determined by the impartial mediator.”

#### **11. Rural Enterprises.**

##### **A. Within the building envelope as-of-right; outside the building envelope with prior permission.**

“Use of the Property for [Rural Enterprises] is permitted. Rural Enterprises shall include, but not be limited to, lawful home occupations, professional home offices, bed and breakfasts, farm machinery and auto repair, saw mills, firewood distribution, campgrounds, home schooling, day care and other educational programs. However, trailer parks, golf courses, and auto dealerships are expressly prohibited on the Property. Buildings and improvements relating to Rural Enterprises, except those described below, must be completely located within the [Building Envelope].

The existing buildings and improvements used for Rural Enterprises may be removed, repaired, and replaced without further permission of the Grantee. Existing rural enterprise buildings and improvements, inside the [Building Envelope] may be enlarged



with prior notice to Grantee [per notice and permission section in easement]: Existing rural enterprise buildings and improvements outside the [Building Envelope] may be enlarged with the advance written permission of the Grantee [per notice and permission section in easement]. New buildings and improvements necessary for Rural Enterprises outside the [Building Envelope] may only be constructed with the advance written permission of the Grantee [per notice and permission section in easement].”

B. As-of-right anywhere on the Property.

“Customary part-time or off-season minor or rural enterprises and activities which are provided for in the County Agricultural Easement Purchase Program approved by the State Board are permitted.”

C. With prior permission.

1. “Grantors retain the right to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, farm machinery repair, sawmills, firewood distribution, or educational programs so long as such uses are confined to locations within the “Farmstead Area” as identified on Exhibit B. Conducting customary rural enterprises on any other part of the Property is not permitted without the advance written permission of the Grantee in each instance. The Grantee shall not give such permission unless the Grantee determines that the proposed use will not substantially diminish or impair the conservation values of the Property.”

2. “The right to conduct any gainful home occupation or profession in the residences referred to [in building envelope described in the easement], provided any such activity is confined within the residence and is conducted primarily by persons who reside in the dwelling. Further, the right to engage in accessory uses of the Protected Property, provided such uses are related to the principal agricultural, forestry, and open space uses of the Protected Property, and are subordinate and customarily incidental to those principal uses. Grantor shall not engage in any such home occupation or accessory use of the Protected Property without first securing the prior written permission of the Grantees, which permission may be withheld if Grantees determine, in their sole discretion, that the occupation, profession or accessory use would be inconsistent with the Purposes of the Grant as stated in [the easement’s Purpose Clause].”

# Agricultural Easements: Allowing a Working Landscape to Work

by Judy Anderson and Jerry Cosgrove

*"If there's anything constant about agriculture, it's that it's constantly changing."*

—Fred Huneke, New York dairy farmer

Over the past 50 years agriculture and the rural landscape have changed from what many of us remember from our childhood. Numerous farms have gone out of business while others, in an effort to survive, have expanded, diversified, or changed their economic focus entirely.

The nostalgic remnants of 19th century agriculture drift away as old dairy barns are abandoned, torn down, or readapted for free-stall barns; small wood-sided equipment sheds give way to larger, more cost-effective metal-sided shops; and barns and plastic greenhouses emerge as part of the ever-changing "historic farmstead." While no one knows where agriculture is headed, or what it will "look like," it is safe to assume that it will continue to evolve.

In the midst of this massive change on America's farmlands, it is important to draft conservation easements that allow flexibility for agricultural practices while protecting the overall rural character and soil resources of a community's farmland. Agricultural easements do not use scenic criteria as driving factors, but focus instead on protecting the working landscape and its soil resources. Recognizing that farmers often cannot economically justify operating their farms with traditional locations of structures, field crops, or commodities, these easements allow farmers (or future farmers who purchase land protected under an easement) to adapt their buildings and farming techniques. Farming is a business; farmers farming on protected land need to make a living.

## Designing an Agricultural Conservation Easement

Many of the agricultural easements currently used are found in state, county or township purchase of agricultural conservation easement (PACE) programs. Rather than attempt to micro-manage



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Some agricultural easements require farmers to obtain prior approval for agricultural improvements and such permitted uses as farm stands, bunk silos and barns.

*Farming is a  
business; farmers  
farming on  
protected land  
need to make a  
living.*

the working landscape, these agricultural easements allow farmers to make timely decisions necessary to run a business in an evolving and competitive marketplace. In addition, a growing number of land trusts and conservation organizations are realizing that easements applied to farm and ranch lands may need to be agricultural easements (rather than scenic easements) if the land is going to retain the potential to be farmed over time.

After reviewing more than 20 agricultural easements from across the nation, we have found they generally address many similar issues:

- agricultural purpose
- farm employee housing
- construction of residential or agricultural buildings
- general definitions of agriculture
- the treatment of farm-generated waste.

Rather than propose one method, or one type of language, for agricultural easements, we suggest you consider the issues discussed in this article and tailor your easement to reflect current and future farmers' needs for long-term flexibility and agricultural viability.

The following briefly outlines issues we have found to be important to the farmers and farming communities in which we have worked in the Northeast, and explores different approaches used in agricultural easements across the country. Other important topics such as working woodlands, mining for on-farm uses, treatment of farm and non-farm trash and waste, and amendments/waivers, should also be addressed

Major Farm  
and Sheep  
Dairy Center,  
Westminster,  
Vermont



COURTESY OF PETER WRENN AND VERMONT LAND TRUST

when drafting agricultural easements.

### Purpose clause

As explained in the Land Trust Alliance's *Conservation Easement Handbook*, the easement's conservation purpose becomes its "touchstone." A clear statement of purpose should provide a standard for future interpretation. Over time, through easement monitoring and discussions with the landowner, the easement will be evaluated by both the land trust and the farmer to determine whether ongoing uses of the land continue to be consistent with its stated purpose. Agricultural easements state that working agriculture is the primary purpose. Less common multi-purpose agricultural easements state that agricultural protection is the primary purpose, with water quality, scenic characteristics, or other conservation goals as secondary purposes.

A third approach is to create an easement of equal purposes. We are aware of at least one easement that strives to establish a dual purpose of equal value between agricultural viability and water quality. In this instance, performance standards address the potential for "tension" between these two purposes.

### Defining Agriculture

Agricultural easement drafters frequently strive to define current and anticipated agricultural practices to avoid confusion as to whether a current or future farming practice is permitted.

Structured in a clause separate from the Purpose Clause, an Agricultural Definition section varies from including a non-inclusive list of permitted uses to stating a definition of agriculture as determined by a state law or program (such as the New York State Agricultural and Markets Law) that will be modified over time to reflect changes in agriculture.

### Agricultural Structures

During our discussions with farmers about agricultural easements, we have found that one of the most critical issues is the amount of flexibility they will have to add or alter agricultural structures. Across the country, agricultural easements recognize the necessity of providing maximum flexibility for agricultural buildings. The most common easement language allows farmers to construct, modify or demolish any farm building necessary to the farm operation without prior permission from the easement holder. This perspective acknowledges that the farmer knows what is most important for his/her farming operation and needs to act accordingly.

However, there are modifications to this approach. A few farmland protection programs require prior permission for construction of agricultural structures. Others blend "as-of-right" construction within a large building envelope (where the majority of the farm buildings and housing will be located in the future) and require advance permission for any construction outside the

designated building area. In this case, farmers can build, enlarge, modify or demolish any agricultural structure within the building envelope without permission. Farm structures outside of the building envelope would be allowed if they meet performance standards set forth in the easement. (For example, the land trust will grant permission if the structure does not unnecessarily impact important soil resources.)

Another approach establishes a threshold at which construction of agricultural buildings under a certain size outside of the building envelope is permitted without prior permission if they are necessary for the farming enterprise and are consistent with the purpose of the easement; prior approval is required for larger buildings. Surface coverage limits, while less common, may also be used. Drafters of agricultural easements will need to work with their farming community to evaluate the best way to allow for construction necessary for current and future farming enterprises.

### Farming practices

Agricultural easements usually incorporate standards that define good agricultural practices in ways that the farm community trusts. These standards are flexible; often defined within state or federal programs (such as Natural Resource Conservation Service) that are updated periodically to reflect changes in agricultural practices. By utilizing state-

defined or federal standards, the easement grantee may avoid difficult discussions with farmers as to "who best knows" how to farm.

Agricultural easements may also be silent about standards for farming practices, relying on on-going farm/conservation management programs such as NRCS's "Conservation Plans." As with other specific easement clauses, each conservation organization will need to decide whether it has the knowledge and resources over the long term to evaluate and enforce such specified farming practices. You may want to contact your local NRCS or Soil and Water Conservation District office to discuss its conservation plans and how they might be incorporated into an agricultural easement.

#### **Approvals for agricultural improvements and structures, permitted uses**

Some agricultural easements require farmers to obtain prior approval for agricultural improvements and such permitted uses as farm stands, bunk silos and barns. Not surprisingly, farmers prefer minimal approval requirements

*There are no  
better advocates  
for farmland  
protection than  
the farmers who  
are living, and  
working, with  
agricultural  
easements.*

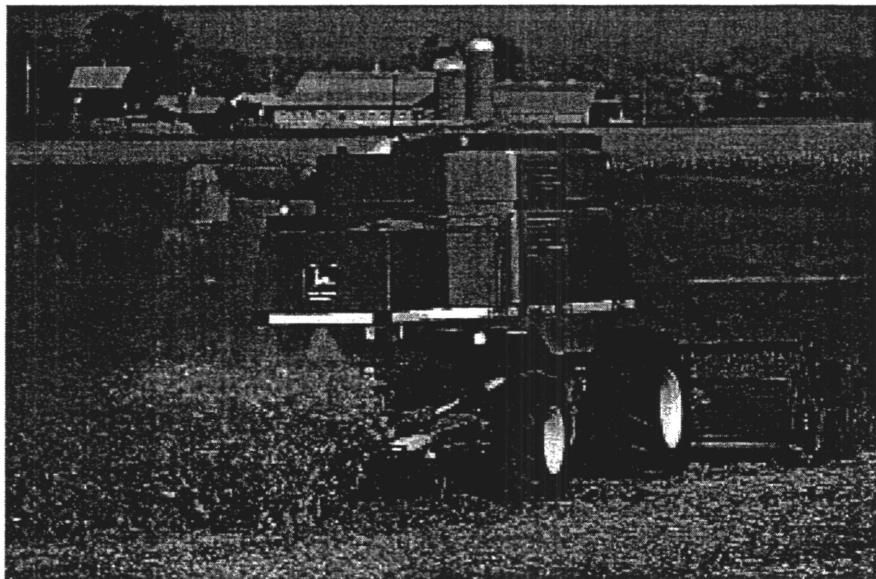
to allow them to respond to changing markets, opportunities for construction assistance, and costs of materials. When permission is required, most easements establish a default time after which, if the land trust does not respond in writing to a farmer's request, permission is deemed granted. This allows the farmer the security of knowing that he or she will be able to make decisions and take action within a reasonable length of time (often 30 to 60 days).

If using this technique, consider adding language that requires the land trust to state why it is denying permission and to provide the landowner with examples of possible remedies. In many cases, the criteria for permission are clearly described in the easement—usually based on whether the proposed construction would harm the property's agricultural viability. This will allow for a more objective decision-making process, and could assist in building a better relationship between the farmer and the land trust.

If you structure your easement to require some level of prior approval, clearly establish the protocol within your land trust to decide who grants permission. Can staff grant permission? Does the board have to approve requests? Is a legal opinion necessary? Must responses to these requests be written? Land trusts should establish a mechanism that provides for a quick response to a landowner. Usually, this empowers staff rather than the board to make decisions. To help assure consistency in granting or denying permission, decision makers should understand the purposes, intent, and reasons underlying the easement and the prior approval clauses.

#### **Rural enterprises**

Increasingly, agricultural easements recognize the importance of allowing diversification of the farm business, which is often necessary to sustain the farm during difficult economic or climatic periods, or to support an entire family. While there are numerous twists to the rural enterprise clause, there are at least two basic approaches:



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Agricultural easements allow farmers (or future farmers who purchase land protected under an easement) to adapt their buildings and farming techniques for changing markets and technologies.



❖ Allow the rural enterprise as long as it is a subordinate business to the farming operation. This might entail part-time or off-season businesses such as bed and breakfasts, mechanical shops, etc.

❖ Allow rural businesses to operate within the farm building envelope. Such businesses may be directly related or completely unrelated to the production, processing, or sale of farm products, and may include home offices, computer repair, machinery repair, day care, etc. These uses may require prior permission from the easement grantee to ensure that the agricultural purposes and intent of the easement are not negatively impacted. Potential land fragmentation is controlled by preventing the subdivision of the building envelope.

### Residential Structures

While agricultural easements allow for farm employee housing necessary to conduct the farming operation (as determined by the farmer and in accor-

dance with local zoning), they vary in their treatment of residential structures that are not necessarily designated for farm workers (such as the principal farm house).

Agricultural easements attempt to minimize land fragmentation and future non-farm/farm conflicts by allowing only a few future non-farm employee residences on the property. The location of these future houses is very important and should factor in wind dispersal of noise, chemicals, dust, and smell, in addition to land fragmentation.

Based on our review of agricultural easements, there are three approaches to residential structures:

❖ Omit non-worker house sites from the easement. Survey out the future house sites—usually on a two- to three-acre lot that is large enough to support a septic system and a replacement system. Easement monitoring can be simplified with a clear delineation that no residential dwellings (other than farm employee housing) are permitted on the property.

❖ Include house sites within the

easement, therefore insuring that any non-residential uses would be prohibited.

❖ Create building envelopes large enough to allow for the residential structure and the establishment of a substantial farm operation with supporting buildings—or the expansion of an existing farmstead—on an as-of-right basis. In this case, the easement provides for a variety of uses within the building envelope, including housing for the farmer, farm-based enterprises, non-farm enterprises, and housing for farm employees and/or family members, so long as they do not negatively impact the property's agricultural viability. In this scenario, agricultural structures constructed outside of the building envelope generally require prior permission. The size of these building envelopes vary based upon the region's farming activities; however, land trusts should resist limiting future farming enterprises by designating building envelopes that are too small.



Lucky Dizzy Ranch on the Missouri River, north of Wolf Creek, Montana

### Subdivision

While provisions that govern permission to subdivide protected farmland vary, two concerns must be addressed. The first focuses on reducing the potential for land fragmentation that would render the farmland unusable as a commercial agricultural enterprise.

Agricultural easements either may create a performance standard that allows subdivision if it does not harm the property's long-term agricultural viability or limit the size of the subdivision, based on the amount of land generally considered a viable farming unit. One factor must be kept in mind: what is deemed a viable farming unit may be very different in the future. Requiring farms to remain in large acreages, depending on the region and the farming economy, may create a long-term property tax burden during periods of slow economic return. Farmers may be forced to sell the farm as a large unit, rather than sell a portion to another farmer and retain an appropriate amount of acreage for their farming enterprise.

The second consideration is based on the concern that protected farmland may be converted to rural estates—thereby being withdrawn, perhaps permanently, from commercial farming. Subdivision may need to be evaluated as it affects long-term commercial farming and the potential to discourage non-farm related ownership. A few farmland protection programs are implementing additional restrictions within the agricultural easement to discourage the conversion to estates. For example, the Massachusetts state farmland protection program's easement incorporates an option to purchase the farm at the agricultural value if the property is offered for sale. Massachusetts would then resell the property, at its agricultural value, to a farmer.

In either case, farm support housing (housing and/or apartments for farm employees or family housing) is not allowed to be subdivided from the farm



Dairy farm near Rupert, Vermont

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as separate, stand-alone, residential properties.

### Dispute resolution

If you are working with farmers who are unfamiliar with conservation easements or need assurances that your land trust will support commercial agriculture in the future, a dispute resolution clause may serve as a mutual "safety valve" to increase the level of trust between your organization and a farmer. Frequently, such clauses allow a mutually-identified party or a predetermined party (such as the state department of agriculture or a separate agricultural conservation organization) to act as a mediator when the easement grantee and the farmer disagree. Because of concerns regarding future interpretation and enforcement, these clauses are often non-binding.

### Farming with a Future

There are no better advocates for farmland protection than the farmers who are living, and working, with agricultural easements. Agricultural easements are drafted to protect soil resources and to allow for the evolution of agriculture as an economic enterprise. In general, these easements are farmer-oriented—written with the knowledge that farmers, perhaps more than any other group of landowners, must make countless decisions on a daily basis as to how they work the land and respond

to changing markets. As land trusts work to protect farmland and the communities and rural character this land sustains, they are drafting conservation easements that increase the chances that land farmed today will be farmed tomorrow.

*Judy Anderson is executive director for the Columbia Land Conservancy (NY). Jerry Cosgrove is an attorney and Northeast field director for American Farmland Trust.*

*Acknowledgements: We thank the following practitioners for their review and comments: Bob Berner (Marin Agricultural Land Trust); Tom Daniels (formerly with the Agriculture Preservation Board, PA, and now a Professor of Planning at SUNY Albany, NY); Rich Hubbard (Massachusetts Department of Food and Agriculture); William Hutton, Esq., (Hastings College of Law); Gil Livingston, Esq. (Vermont Land Trust); Dennis Bidwell, Tim Storrow and Bob Wagner (American Farmland Trust).*





## PRIVATE LANDOWNER OPTIONS

Prepared by American Farmland Trust

Agricultural landowners are pulled in many directions. Often land-rich and cash-poor, they want to retire comfortably while keeping their land in productive use. Or they may be enticed by developers who are willing to pay more for their land than another farmer could afford. These pressures lead to sprawl and piecemeal development, taking precious land out of farming and forestry. And due to capital gains and other taxes, the sales aren't always beneficial to the landowner.

You have alternatives to selling out for development. If you want to ensure that your land will be protected from development, provide future income to you or your spouse, arrange a transition to keep your land in production or avoid unnecessary taxes, the following options can help achieve your objectives.

Most of these options are based upon the use of a conservation easement, so we'll start there.

A **Conservation Easement** is a deed restriction a landowner volunteers to place on his or her property to protect resources such as productive agricultural land, ground and surface water, wildlife habitat, historic sites or scenic views. Landowners ("grantors") use them to authorize a qualified conservation organization or public agency ("grantee") to monitor and enforce the restrictions set forth in the agreement.

Conservation easements are flexible documents tailored to each property and the individual needs of each landowner. They may cover an entire parcel or portions of a property. The landowner retains private property rights and works with the prospective grantee to decide which activities to limit to protect specific resources. Agricultural conservation easements are designed to keep land available for farming.

Conservation easements often are used as a tool to support other financial options, but donating a conservation easement is an option of its own.

### Objectives:

1. Conserve land permanently;
2. Keep land in private ownership; and
3. Reduce transfer taxes including income, gift and estate taxes.

A **Bargain Sale** is a sale of land or property to a municipality, qualified state agency or nonprofit organization at a price below the property's fair market value. The difference between the sales price and the market value represents a potential charitable deduction. A professional appraiser must determine the fair market value. Then, the organization that buys the property protects it from future development with a conservation easement.

The seller can take a tax deduction on the difference between the fair market value and the bargain sale price. The financial benefit depends upon the fair market value of the farm, the bargain sale price

and the seller's tax status. For tax reasons, the landowner may choose to spread payments over time, which is called an installment bargain sale.

Objectives:

1. Pass on management responsibilities;
2. Receive cash immediately; and
3. Receive tax deductions.

A **Charitable Gift Annuity** is partly a gift and partly an exchange of property for the promise to pay an annuity contract. The landowner (or donor) transfers property directly to a nonprofit organization or charity in return for a fixed annuity for life. The donor also receives an immediate income tax deduction and often is able to realize an increase in annual income. Plus, the value of the property is excluded from his or her taxable estate at death.

Typically, the landowner deeds his or her farm to a qualified conservation organization. In turn, the organization protects it with a conservation easement and then sells it to another farmer. The proceeds from the sale can be used to fund the gift annuity. The amount of the annuity payment is determined by a variety of factors, including age, number of beneficiaries and the value of the easement-restricted property.

Objectives:

1. Divest of management responsibilities and yearly expenses associated with owning the property;
2. Potentially increase farm income;
3. Remove the property from the taxable estate; and
4. Ensure the property is protected permanently for agricultural use.

A **Charitable Remainder Trust** is an irrevocable trust that provides lifelong income to the donor and the donor's beneficiaries. The first step is donating a conservation easement to a qualified organization. Then the landowner transfers title to the land to a charitable remainder trust and the trustee sells the land. The trustee invests the sales proceeds to generate income for the donor and his or her beneficiaries.

The CRT can be established with a gift of land to provide annual income for life to the designated beneficiaries. Usually, the income is generated by investments and managed by a trustee once the property has been sold. When the beneficiaries die, the payments stop and the remaining property is distributed to one or more charitable organizations of the donor's choosing.

The income may fluctuate from year to year depending upon the structure of the trust, the ages of the donor and beneficiaries, the value of the property funding the trust and other factors. The landowner receives charitable tax deductions for placing a conservation easement on the property and for the present value of the CRT, which will pass to the organization at death. In addition, capital gains tax is minimized, and the value of the property is excluded from the owner's taxable estate.

Objectives:

1. Complete avoidance of capital gains tax;
2. Receive charitable tax deduction; and
3. Exclude property from taxable estate.

A **Gift or Donation** of land to a qualified nonprofit or government agency gives the landowner maximum tax benefits. If the agreement is made that the grantee will protect the land and keep it in production, a gift can relieve management responsibility and ensure permanent conservation. The landowner receives reductions in federal income tax, property tax, capital gains and estate taxes.

Gifts of land for conservation purposes can be achieved in several ways. Some methods include: immediate outright donation, a bequest through a will, or donation with a retained life estate.

Objectives:

1. Maximize tax benefits;
2. Relieve ownership and management responsibility; and
3. Protect land permanently.

A **Retained Life Estate** allows landowners to continue to live on their land while conveying their property to a charity or qualified nonprofit organization. The original landowners become life tenants and continue with their previous responsibilities to their property. They must keep the premises insured, maintain the land and buildings in good condition and continue to pay property taxes. In exchange, if their property is a personal residence (including a second home or farm), or if it has significant conservation, public recreation or historic value, the original landowner receives an immediate tax deduction for his or her gift. If the land has significant conservation values, and if the landowner specifies, the grantee will place a conservation easement on the property.

The charitable income tax deduction is limited to the present value of the remainder interest that is being given to the charity, which is determined by actuarial tables published by the IRS. If the property generates rental or other income during their lifetimes, the landowners keep the proceeds. Following their deaths – or sooner if they choose, the property passes to the charity or nonprofit organization.

Objectives:

1. Immediate tax benefits;
2. Support a favorite charity or nonprofit organization; and
3. Conserve working lands, especially when the grantor either has no heirs or has no heirs who want to keep the land in production.
4. Allow landowners to enjoy their land for life.

A **Right of First Refusal** is a legally binding agreement that allows a qualified municipality, state agency or nonprofit organization to match a bona fide offer within a specified period of time. This is a valuable strategy for landowners who want to conserve their land in the future, but are not ready to sell their properties now. By offering a right of first refusal, the landowner can initiate the process for land conservation while allowing a future buyer time to prepare for the sale. This also can be achieved with an option – or a contract between the landowner and the qualifying agency or organization – to purchase the property at a set price within a specified time period.

Objectives:

1. Initiate a process for future conservation;
2. Buy time for a qualifying agency or organization to finance the transaction; and
3. Create a conservation opportunity that might not otherwise be possible.



# FACT SHEET

## PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS



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Tel: (202) 331-7300  
Fax: (202) 659-8339  
Web: [www.farmland.org](http://www.farmland.org)

### DESCRIPTION

Purchase of agricultural conservation easement programs compensate property owners for restricting the future use of their land. PACE is known as Purchase of Development Rights (PDR) in many locations.

PACE programs are based on the concept that property owners have a bundle of different rights, including the right to use land, lease, sell and bequeath it, borrow money using it as security, construct buildings on it and mine it, or protect it from development, subject to reasonable local land use regulations. Some or all of these rights can be transferred or sold to another person. When a landowner sells property, generally all the rights are transferred to the buyer. PACE programs enable landowners to separate and sell their right to develop land from their other property rights. The buyer, however, does not acquire the right to build anything on the land, but only the right and responsibility to prevent development. After selling an easement, the landowner retains all other rights of ownership, including the right to farm the land, prevent trespass, sell, bequeath or otherwise transfer the land.

Landowners voluntarily sell agricultural conservation easements to a government agency or private conservation organization. The agency or organization usually pays them the difference between the value of the land as restricted and the value of the land for its "highest and best use," which is generally residential or commercial development. The easement price is established by appraisals or a local easement valuation point system. Typically, PACE programs consider soil quality, threat of development and future agricultural viability when selecting farms for protection.

Easements give qualified public agencies and private organizations the right to prohibit land uses and activities that could interfere with present or future agricultural use.

Terms may permit the construction of new farm buildings and housing for farm employees and family members. Easements "run with the land," binding all future owners unless the document establishing the easement provides that the covenant may be terminated for cause or at the end of a specified period of time.

### HISTORY

Suffolk County, N.Y., created the nation's first PACE program in the mid-1970s. Following Suffolk County's lead, Maryland and Massachusetts authorized PACE programs in 1977, Connecticut in 1978 and New Hampshire in 1979. Concern about regional food security and the loss of open space were motivating forces behind these early PACE programs.

### FUNCTIONS & PURPOSES

PACE compensates landowners for permanently limiting non-agricultural land uses. Selling an easement allows farmers to cash in a percentage of the equity in their land, thus creating a financially competitive alternative to development.

Permanent easements prevent development that would effectively foreclose the possibility of farming. Because non-agricultural development on one farm can cause problems for neighboring agricultural operations, PACE may help protect their economic viability as well.

Removing the development potential from farmland generally reduces its future market value. This may help facilitate farm transfer to the children of farmers and make the land more affordable to beginning farmers and others who want to buy it for agricultural purposes. The reduction in market value may also reduce property taxes and help prevent them from rising.

## PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS

*For additional information on Purchase of Agricultural Conservation Easements and other farmland protection programs, the Farmland Information Center offers publications, an on-line library and technical assistance. To order PACE: What Works, a 38-page comprehensive technical report (\$14.95), or other AFT publications, call (800) 370-4879. The farmland information library is a searchable database of literature, abstracts, statutes, maps, legislative updates and other useful resources. It can be reached at <http://www.farmlandinfo.org>. For additional assistance on specific topics, call the technical assistance service at (413) 586-4593.*

PACE provides landowners with liquid capital that can enhance the economic viability of individual farming operations and help perpetuate family tenure on the land. For example, the proceeds from selling agricultural conservation easements may be used to reduce debt, expand or modernize farm operations, invest for retirement or settle estates. The reinvestment of PACE funds in equipment, livestock and other farm inputs may also stimulate local agricultural economies.

Finally, PACE gives communities a way to share the costs of protecting farmland with landowners. Non-farmers have a stake in the future of agriculture for a variety of reasons, including keeping locally grown food available and maintaining scenic and historic landscapes, open space, watersheds and wildlife habitat. PACE allows them to “buy into” the protection of farming and be assured that they are receiving something of lasting value.

### ISSUES TO ADDRESS

The effectiveness of PACE programs depends on how jurisdictions address several core issues.

These issues include:

- What kind of farmland to protect, which areas to target and how to set priorities?
- What restrictions to put on the use of the land?
- How much to pay for easements?
- How to raise purchase funds?
- How to distribute state funds among local jurisdictions?
- How to administer PACE programs?
- How to monitor and enforce easements?

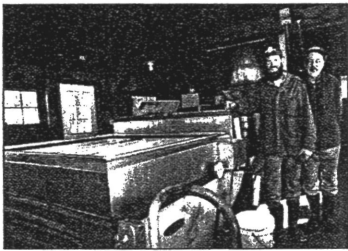
Source: American Farmland Trust, *Saving American Farmland: What Works* (Northampton, Mass., 1997).

### BENEFITS

- PACE protects farmland permanently, while keeping it in private ownership.
- Participation in PACE programs is voluntary.
- PACE can be implemented by state or local governments, or by private organizations.
- PACE provides farmers with a financially competitive alternative to development, giving them cash to help address the economic challenges of farming in urban-influenced areas.
- PACE programs can protect ecological as well as agricultural resources.
- PACE limits the value of agricultural land, which helps to keep it affordable to farmers.
- PACE programs involve the non-farming public in farmland protection.

### DRAWBACKS

- PACE is expensive.
- PACE can rarely protect enough land to eliminate development pressure on unrestricted farms.
- PACE programs are generally unable to keep up with farmer demand to sell easements. This results in long waiting lists and missed opportunities to protect land.
- Purchasing easements is time-consuming.
- The voluntary nature of PACE programs means that some important agricultural lands are not protected.
- Monitoring and enforcing easements requires an ongoing investment of time and resources.



# INVESTING IN THE FUTURE OF AGRICULTURE:

The Massachusetts Farmland  
Protection Program and the  
Permanence Syndrome

  
*American Farmland Trust*



## EXECUTIVE SUMMARY

America is losing approximately 1 million acres of farmland every year. Between 1982 and 1992, every state lost some of its prime or unique farmland to urban development. As awareness of the threat to farmland grows, state and local governments are increasingly looking at Purchase of Agricultural Conservation Easement programs as a solution. PACE programs protect farmland by compensating farmers for giving up the right to develop their land.

## EXECUTIVE SUMMARY

Since 1977, state and local governments and the federal government have spent more than \$975 million to purchase agricultural conservation easements on more than 581,000 acres of farmland. PACE programs are designed to prevent conversion of farmland to non-agricultural uses. Critics claim that PACE is an expensive approach to protecting open space, while advocates maintain that these programs have significant agricultural, economic and environmental benefits. Until now, there has been little evidence to support either viewpoint.

In 1997, American Farmland Trust and the Franklin and Deerfield land trusts conducted a study of 75 farms protected by the Massachusetts Agricultural Preservation Restriction program. The results of the study clearly document the agricultural and economic benefits of PACE programs. Major findings include the following:

1. **The land protected by the Massachusetts APR program is actively farmed.**  
Sixty percent of the farmers surveyed said that *all* of their protected land is in agricultural use. An additional 30 percent reported that the majority of their APR land is being farmed. Fewer than 10 percent of farmers said that less than half of their protected land is devoted to agriculture. Much of the land not being farmed is woodland, wetlands or otherwise unsuitable for agricultural use. In some cases, participation in the APR program has increased farming activity on the land, as landowners have cleared brush, re-seeded hayfields and brought old fields back into production.
2. **Owners of protected farms plan to keep their land in agricultural use for the foreseeable future.**  
More than 93 percent of farmers surveyed said that they planned to keep the land in agricultural use for the next decade.
3. **The APR program facilitates transfer of farmland to the next generation of farmers.**  
Farmers who purchase or inherit protected farms are younger and have more resources to devote to agriculture than those who sell restrictions on the land. The average age of farmers who sold a restriction on their land was 65, compared to 49 for farmers who bought protected land and 47 for farmers who inherited land enrolled in the APR program. Median income for the older group of farmers was \$31,713, compared to \$40,601 for land purchasers and \$62,500 for farmers who inherited protected land.

Interviews conducted for this study show that young, innovative, educated, highly motivated farmers are actively looking for parcels of protected land. Seventy-five percent of farmers who purchased protected land said that the APR program had a "very positive impact" on the purchase price of the land, and 62.5 percent said that the program had a "very positive impact" on their actual ability to buy the land.

More than 70 percent of farmers surveyed intend to pass their protected land on to other family members in the future. Nearly 50 percent believe that the APR program will help them achieve this goal.

**4. The APR program supports investment in agriculture.**

One of the most dramatic and promising findings of this study is the extent to which APR farmers are investing in the agricultural potential of their land. Almost three-quarters of the farmers interviewed have improved their operations since they participated in the APR program. Improvements include repairs to farm buildings, implementation of conservation practices, purchase of land, equipment and livestock, and development of new products and marketing strategies. Seventy-eight percent of the farmers who made changes said that the APR program was important to improving their operations, and 95 percent said that they believed the changes made are important to the long-term viability of their operations.

Information collected during personal interviews suggests that the APR program creates a psychological “permanence syndrome” among participating farmers. Farmers who believe that their land is safe from non-farm development feel more secure about investing in the agricultural potential of the land. This investment—in farm buildings, conservation practices, land, machinery, livestock and farm management strategies—creates a greater likelihood that protected farms will be successful in the future.

**5. Farmer satisfaction with the APR program is extremely high.**

Eighty-five percent of the farmers surveyed were satisfied with the APR program. Ninety-two percent said that they would be likely participate again.

**6. Participation in the APR program is a key element of a comprehensive strategy to keep farms viable for the future.**

Many of the farmers interviewed expressed their belief that without the opportunity to participate in the APR program, they would no longer be farming. Others said that they would still be farming, but they would have had to sell land for development to stay in business. The APR program serves as a safety net for some struggling farms, but it seems to be most effective when used as one element of a comprehensive strategy to keep a farm viable for the future. The six case studies included in this report illustrate how farmers are using the APR program to expand and modernize their operations, implement environmentally sound farming practices and transfer land and operations to younger family members. These farmers emphasize the importance of developing business, marketing and estate plans as part of the process of deciding to protect a farm.

## INTRODUCTION

In September 1997, the Massachusetts Agricultural Preservation Restriction program celebrated its 20th anniversary. The APR program was one of the first state-run programs to give farmers an alternative to selling land for development. It was created to stem the tide of farm sales and farmland conversion in the decades following the end of World War II. Between the mid-1940s and the mid-1970s, Massachusetts lost 83 percent of its 35,000 farms. Land in farms, as measured by the U.S. Census of Agriculture, declined from 2 million acres to 600,000 acres. The trend seemed clear: Unless something was done, Massachusetts farms and farmland were headed for extinction.

The APR program was inspired by the purchase of development rights program created in Suffolk County, N.Y. The county, located on the eastern end of Long Island, was farmed extensively prior to World War II; but demand for suburban and vacation homes resulted in skyrocketing land prices during the 1950s and 1960s. Potato, vegetable, livestock and poultry farmers found that they could not compete with developers for land. Property taxes became a very heavy burden. Residential development made agricultural practices such as manure spreading and chemical spraying more difficult and controversial. Those trends made farming less rewarding, just as high land values made the prospect of selling land for non-agricultural purposes more attractive.

To address these problems, Suffolk County gave farmers the opportunity to sell the right to develop their land—not to a developer, but to the county, which would extinguish that right forever. The process of designing the PDR program and winning political support for a \$21-million bond to fund it started in 1974. Funds were appropriated in 1976, and the first deals were closed in 1977.

Policymakers in Massachusetts and Maryland quickly recognized the potential of the Suffolk County program to address the loss of farmland in their states, and adopted their own programs just as Suffolk County officials were signing the first checks to farmers. Since 1977, 12 additional states and dozens of local jurisdictions have created similar programs or approved funding to compensate farmers for giving up the right to develop their land. [see Appendix A, p. 52]

These programs are known by many different names, for example, agricultural preservation restriction in Massachusetts, purchase of development rights in Suffolk County and Maryland, and purchase of agricultural conservation easements in California and Pennsylvania. The remainder of this report will use APR to refer to the Massachusetts program and PACE as the generic term referring to other programs that pay farmers to permanently restrict development of their land. The restrictions imposed by the Massachusetts program will be referred to as *aprs*.<sup>1</sup>

PACE programs are based on the concept that property owners have a bundle of different rights, including the right to use land, lease, sell and bequeath it, borrow money using it as security, construct buildings on it and mine it, or protect it from development, subject to reasonable local land use regulations. Some or all of these rights can be transferred or sold to another person. When a landowner sells property, generally all the rights are transferred to the buyer. PACE programs enable landowners to separate and sell their right to develop land from their other property rights. The agency or organization that acquires the restriction does not acquire the right to build anything on the land, but only the right and responsibility to prevent development.

## INTRODUCTION

State and local governments with PACE programs provide funds to compensate farmers for giving up the right to develop their land. Typically, a government agency pays farmers the difference between the restricted value of the land and the value of the land for its “highest and best” use, which is generally residential development. [For more information on PACE, see Appendix A, p. 52].

Easements usually are intended to last in perpetuity. Most PACE programs make provisions for termination of the restrictions if the land is no longer suitable for farming. Generally, the criteria for termination of easements are stringent and the process is lengthy, difficult and expensive.<sup>2</sup>

Each state has different criteria for eligibility to sell an easement. In Massachusetts, farms must be at least five acres in size. The land must have been “actively devoted” to agriculture or horticulture for at least two immediately preceding tax years and must provide at least \$500 in gross sales per year, plus \$5 for each additional acre or 50 cents per additional acre of woodland or wetland.<sup>3</sup> The APR program’s main criteria for selecting farms to protect are:

1. The suitability and productivity of the land for agricultural use based on its soil classification, physical features and location;
2. The degree of threat to the continuation of agriculture on the land due to circumstances such as the owner’s death, retirement, financial difficulties, development pressure or insecurity due to rental agreements;
3. The degree to which the land is of a size and composition to be economically viable for agricultural purposes and the likelihood that it will remain in agricultural use for the foreseeable future.<sup>4</sup>

APR program managers try to acquire contiguous parcels of land and farms in close proximity to each other to create large blocks of protected farmland. They consider the degree to which projects would accomplish environmental and cultural objectives, such as protection of water resources and flood plains and the preservation of historic and open space resources and scenic views. They also try to balance the costs and benefits of acquiring *aprs*.<sup>5</sup>

The law that created the APR program allows municipalities to co-hold restrictions with the Commonwealth. In deciding which properties to protect, the state considers the comments and recommendations of towns and the degree to which a town is willing to provide financial and legal assistance and participate in enforcing the restriction.<sup>6</sup> The APR program also works with land trusts and other nonprofit land conservation organizations. Land trusts promote the program to farmers and in some circumstances may “preacquire” a restriction and sell it to the state when purchase funds become available.

The APR program’s long track record makes Massachusetts a good place to study the effectiveness of PACE programs in general. A previous American Farmland Trust study found very high farmer satisfaction with the APR program. The fact that the state always has long waiting lists confirms this finding.<sup>7</sup> By the end of 1997, the program had protected more than 40,000 acres of land from conversion to non-farm uses—approximately 7.6 percent of the state’s land in farms, according to the 1992 Census. Yet, critics have charged that APR protects open space but does little to help the state’s agricultural economy. Others claim that protected farms are sitting idle or being used for non-agricultural

purposes. In 1997, American Farmland Trust teamed up with the Franklin and Deerfield land trusts to evaluate the impact of the program on participating farms.

### Purpose of this study

This study was designed to explore the impact of the APR program on participating farms. While legislators and the public generally appreciate the role of PACE in protecting open space, the research for this report was intended to investigate the agricultural, economic and environmental benefits provided by the APR program. Previously, evidence of those benefits has been largely anecdotal. American Farmland Trust, Franklin Land Trust and Deerfield Land Trust long have been aware of individual farmers who used the APR program to improve the performance of their operations, but lacked the data to determine whether these benefits were widespread.

The 20-year history of the Massachusetts program offered researchers the opportunity to explore both the initial advantages farmers received from selling *aprs* and continuing benefits of the program over the years. The study sponsors wanted to see if the proceeds from the sale of *aprs* were being reinvested in farms and how selling an *apr* affects subsequent owners of the land and land tenure patterns. They also hoped to document agricultural improvements on protected farms, changes in farm management practices and implementation of conservation measures.

Given the cost of the APR program, it is important that policymakers and the general public understand its value to participating farms. It is just as important for farmers themselves to see the benefits of selling restrictions and purchasing protected land. The case studies conducted for this report are designed to illustrate the benefits of participating in the APR program and inspire other farmers to protect their land.

### Study sponsors

American Farmland Trust is a private, nonprofit conservation organization dedicated to protecting the nation's strategic agricultural resources. Founded in 1980, AFT works to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment. Its activities include public education, technical assistance, policy research and development and direct land protection projects. AFT has had offices in Northampton, Mass., since 1987.

Franklin Land Trust is a private, nonprofit conservation organization dedicated to the preservation of farmland, open space and rural character in western Franklin County. Founded in 1987, FLT has protected more than 4,500 acres through the use of creative land protection and development strategies. The land trust often works in cooperation with the APR program to protect farms, and has sponsored independent efforts to promote local farm products. FLT also accepts donations of easements on farmland, and helps property owners protect land and natural resources through limited development projects and conservation estate planning.

Deerfield Land Trust was founded in 1990 to preserve the natural resources and character of the land within the town of Deerfield for agricultural, recreational, educational, historical and environmental purposes. DLT has protected more than 700 acres.

### Study region

AFT's Northampton office, FLT and DLT are all located in Massachusetts' Connecticut River Valley, a three-county region slightly west of the center of the state. The Valley encompasses the best farmland in Massachusetts. Hampden County, dominated by the city of Springfield, is mostly urban in character, but agriculture continues to be an important land use in Hampshire and Franklin counties, with farms accounting for 16 and 17 percent of the land base, respectively.<sup>8</sup> Farming also is important to the region's economy, generating more than \$73 million in annual sales.<sup>9</sup> According to the U.S. Department of Agriculture's Natural Resources Conservation Service, there are approximately 4,000 acres of prime and unique soils in the two counties.<sup>10</sup> The 1992 Census of Agriculture reported a total of 127,943 acres of land in farms in Hampshire and Franklin counties.

Farms in Hampshire and Franklin counties give the Valley its scenic character, which is valued by residents and appreciated by tourists. The region's agricultural land also provides good habitat for wildlife, and many farms contain important archaeological resources. But the Valley's scenic and rural character also is attractive to newcomers, and farmland in Franklin and Hampshire counties is at high risk for development. Between 1982 and 1992, approximately 17,000 acres in the two counties were developed. In Hampshire County, development increased by 19.6 percent, in Franklin County, by 34.2 percent.<sup>11</sup>

Over the past decade, there has been a remarkable consensus on the need to protect the Valley's natural, scenic, cultural and agricultural resources. Congress designated the entire Connecticut River watershed—from Vermont to Connecticut—as the Silvio O. Conte Wildlife Refuge. Since then, the U.S. Fish and Wildlife Service has been working with state and local governments and private organizations to develop strategies to protect the Valley's rare and endangered species, anadromous fisheries, wetlands and wildlife habitat. The Massachusetts Department of Environmental Management considers the Valley a "Distinctive Landscape," a designation reserved for just 4 percent of the Commonwealth's land base. The Nature Conservancy and the National Trust for Historic Preservation also have acknowledged the Valley's unique character and have targeted the region for protection. Including Franklin and Deerfield land trusts, at least 10 local land conservation organizations are active in the two counties.

Valley residents are concerned about loss of farmland and the future of agriculture in the region. In the early 1990s, a group of farmers, agricultural advocates, conservationists and other concerned citizens began meeting to discuss the challenges facing farmers in the area. In 1994, the group received a four-year grant from a special Kellogg Foundation program designed to help make farming communities agriculturally, environmentally and economically sustainable. After a process of defining the challenges facing Valley farmers, The Community Involved in Sustaining Agriculture Project formed eight action groups to address these issues. The action groups have sponsored workshops and training sessions on topics including agricultural marketing, agricultural financing and farm transfer, farm labor issues and innovative farming practices. CISA's Farmland Action Group provided funding for this study.



The Valley is also a priority area for the APR program. Thirty-nine percent of the 441 properties protected by the APR program are located in Hampshire and Franklin counties. The Commonwealth has purchased restrictions on 172 properties in the two counties, accounting for 12,929 acres of land—32 percent of the total land area protected by the APR program. The Commonwealth has spent \$26,901,425 to protect Franklin and Hampshire County farmland, at an average cost of \$2,081 per acre. The high concentration of APR farms in the region makes the Valley an ideal place to conduct a study of the program. Vegetable crops, hay and pasture are the most common uses of APR properties in the two counties. Approximately 20 percent of protected farms raise dairy cows.

## Matuszko Family Farm Hadley



When Edwin Matuszko's grandfather purchased the family's 37-acre farm a few miles east of the Connecticut River more than 80 years ago, he could not have imagined the transformations that would take place on the land in the latter half of the century. Strip malls, shopping centers and suburban housing all have converged on the fertile fields of Hadley. Although harvests of vegetables and broadleaf tobacco from the sandy loam soils rival or surpass crop yields in most of the nation, the land is even more valuable for development.

Edwin's father continued farming when his father retired after World War II. Edwin and his four siblings grew up on the land, but they all left the farm to pursue other careers. For a time, it seemed as though the Matuszko's relationship with the land might end. Edwin's parents did not want to see the farm carved up into building lots, but they were afraid that this was their only option.

The situation changed when Edwin grew tired of working in the plastics industry and he and his wife Linda decided to move back to the farm. The older Matuszkos were enthusiastic about keeping the farm in the family, but they weren't sure how they could transfer the land to Edwin and Linda and still divide the estate fairly among all their children. Edwin's brother had worked for the APR program, and several neighboring farmers had enrolled in the program, and they encouraged the Matuszkos to investigate the possibility of selling an *apr*.

Edwin's parents contacted APR program staff to see if selling a restriction could help them achieve their goal of transferring the farm while providing an equal inheritance for all five children. Edwin explains that his parents were first-generation Americans, and giving up the property value that they had worked so hard to build was "a big thing to overcome." They also were concerned that the state would intervene in day-to-day operations on the farm. They quelled these concerns by speaking with other APR farmers. They also concluded that the program offered Edwin and Linda their only chance to own the farm.

Sadly, Edwin's father passed away before sale of the *apr* was finalized in 1989. But his planning paid off when the proceeds of the sale were used to settle his estate among his wife and children without selling a single lot for development. In 1993, Edwin and Linda purchased the farm from Edwin's mother. This would have been impossible, says Edwin, if the value of the farm had not been reduced by the *apr*. "Everyone seems satisfied," he reflects on the process. "It relieved a lot of pressure."

Edwin and Linda see the restriction on their land as an added incentive for good stewardship and careful farm management. "We can't just lop off a building lot and sell it to get an influx of money," Edwin explains. "That choice is gone, and it pushes us to do the best we can." The Matuszkos have a reputation for innovation. They were founding members of the Pioneer Valley Growers' Cooperative, and continue to market their diverse harvest of vegetables through this outlet. According to Edwin, membership in the Coop has increased his awareness of market trends in produce, allowing him to tailor crops carefully to local demands. A recent experiment with eggplant proved especially successful.

The Matuszkos' commitment to succeed at farming has brought about other changes in their operation. Edwin and Linda remodeled a barn that they now use for packaging. They purchased a new tractor, a refrigerated truck and a set of cultivators. They also enrolled in the Massachusetts Partners with Nature integrated pest management pilot project in the early 1990s. While scouting for vegetable pests is "sometimes a pain," says Edwin, he has found it to be "suprisingly cheaper" than spraying. And Edwin and Linda have plenty of plans for the future. They want to install subsurface drains and underground irrigation. Edwin thinks that he can even use his protected farm as a marketing strategy. "Peppers from APR land!" he proclaims, smiling.

The Matuszkos believe that protecting the rich farmland of the Connecticut River Valley is a part of a long-sighted planning process. They consider themselves fortunate to be farming with "a rather large conglomeration of APR land in the immediate area." According to the Massachusetts Department of Food and Agriculture, the APR program has protected 22 properties—a total of approximately 1,000 acres—within a two-mile radius of the Matuszkos' farm. Edwin sees the block of protected land as a welcome "continuation of what it has been for the last few hundred years." By protecting the farm and keeping it in the family, Edwin and Linda believe they are creating opportunities for their young son and others in generations to come. Although Edwin's grandfather could not have known what the future would bring, his good stewardship of the land made it possible for his grandson to be a farmer. Edwin and Linda want to pass along the same privilege to their own grandchildren.



Duffy Family Farm  
Amherst

Paul Duffy did not grow up on a farm, but he knew he wanted to be a farmer from early childhood. He started working on a horse farm, haying and showing horses, before his 10th birthday. While many teenage boys may spend their free time working on cars, Paul was more interested in livestock. He helped raise beef cattle through high school on another farm in his home town. He earned his degree in animal agriculture, and worked as farm manager for Hampshire College for nearly five years. After leaving Hampshire, Paul moved to central Massachusetts to manage a farm for the non-profit Heifer Project International, a world hunger relief organization.

In 1982, Paul started raising his own herd of purebred Holstein cattle as a step toward building his own farm. In 1990, he and his wife, Anne, began looking for land. Paul was very familiar with *aprs*—he was involved in applying to the program for both Hampshire and the Heifer Project—and he knew that the program could help make his dream of purchasing a farm a reality. “We specifically searched out a piece of APR property,” says Paul. “It was one of the most important criteria.”

The Duffys found what they were looking for in a protected farm in Amherst in 1996. The *apr* had just been sold, Paul relates, and the land “was being marketed on its agricultural attributes and not its development potential.” The farm had not been worked in 40 years and was “slightly run-down,” says Paul, but this also made it more affordable. Like most farmers, Paul speaks of his land with pride. “It was...the most holistic resource,” he explains. “It’s got an excellent water resource, woodlot land, open land—and the open land is for all practical purposes Class I: It’s flat, it’s got no stones. It’s an exceptional piece of Connecticut River Valley farmland.”

Paul sees the APR program as an excellent tool for young farmers. “It was our ticket to enable us and empower us to...[own] a resource that we could potentially make a go of,” he states enthusiastically. “If we would have had to buy it for [full market value], it would not have been manageable for us.” The Duffys also believe that purchasing protected land has enhanced their opportunity to diversify, giving them the ability to be creative without as much financial strain as they would have if they were facing development pressure.

Paul is full of ideas to make the farm profitable. His main business is cattle genetics. He uses a technique known as super ovulation and embryo transfer. Frozen purebred embryos are exported or implanted in surrogate mothers. The Duffys currently own 30 head of cattle. Fourteen cows are housed on their 38-acre parcel, the remainder are boarded with local dairy farmers. This year, Paul cut hay and raised three acres of pumpkins to test the viability of marketing vegetable crops directly from the farm.

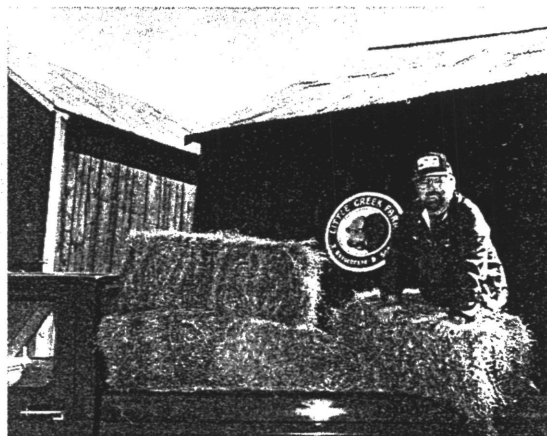
Paul and Anne also have other businesses to supplement their income until the farm can support them. Paul is an agricultural jack-of-all trades, doing a little farm brokerage work, some contract work for other farms, restoring barns and operating his own World Wide Web site dealing with agricultural trade issues. Anne is a professional photographer. "If we had our druthers, we'd be working exclusively on the farm," Paul explains, "but we're not there yet. We've not yet been here a year and this farm hasn't been farmed in 40 years, so it's tons of work."

Fortunately, the Duffys enjoy the labor of bringing their farm back to life. Their long-term goal is to purchase additional protected land, bring more cows home and expand the operation. Through increased growth and diversification of their cattle and vegetable operations, the Duffys hope to build a successful farm business based on hard work and agricultural science.

Several farmers used the APR program as a strategy to make the purchase of additional land more affordable. "On all the land we have in APR, [selling the *apr* has] been the leverage that has allowed us to purchase it," says one of the Valley's most successful farmers. "Land comes up for sale at certain times and it's never at your best economic place, but farmland is only transferred once a generation and if you are using a piece of ground integral to your operation, and it is for sale, and the price is reasonable, then you can make that decision." Another farmer reflected that a buyer's interest in protecting farmland can facilitate the sale. "It does help the sale a lot," he believes. "Especially if you are selling farmer to farmer, people will generally sell for less. It's comforting for the person selling the land to have that restriction in place. That helped me in my purchase, as far as the person not demanding the same price as they would from a developer."

*"I couldn't have afforded the land without [APR]. There was no way to justify paying full price of land to grow strawberries on it."*

## Beauchesne Family Farm Montague



Tom Beauchesne's earliest memories are of growing up on his father's farm in Montague, less than five miles from where he now raises hay, beef, vegetables and flowers on his own land with his wife and sons. While the distance between the two farms is short, it took the Beauchesnes decades of hard work, careful planning, and the help of the APR program to make the journey.

The farm that Tom remembers from childhood was divided and sold many years ago. Tom knew that he wanted to own his own farm more than 20 years ago, but he quickly found that farms "were too expensive...for somebody who didn't inherit one." Still, Tom and his new wife, Jackie, started planning for the farm they hoped to own some day. While working at the University of Massachusetts and building houses on the side, Tom started to set aside money for land and equipment, confidently telling himself that someday he was going to be a farmer. The Beauchesne's nest egg grew slowly as they raised two sons and Tom started a business growing hay. They started to buy small parcels of land. The family moved a few times, each time to a slightly larger property: from four acres to nine, and then to 23. Tom and Jackie rented additional land as the hay business grew and the boys took an interest in farming.

Tom explains that he has taken advantage of a niche market for equine hay. Horse owners, he says, are willing to pay top dollar for good hay, and over the past 20 years, the Beauchesnes have established a reputation as high-quality growers. "My hay is sold before it is cut, each year," Tom says proudly. When he's not working on his own farm, Tom tends the greenhouses at the university and teaches classes on the floriculture industry. Over the years, he and Jackie have raised cut flowers and mums, which they have sold at roadside stands. The family also has a herd of Angus cattle that they raise organically.

As Tom and Jackie expanded and diversified their farming activities, they continued to look for a larger farm. Their goal was to acquire enough high-quality land to allow them to leave their other jobs and sustain themselves entirely on their income from agriculture. They also wanted a farm large enough to support one or both of their sons. By



the 1990s, the Beauchesnes were renting a 100-acre parcel of land from a farmer in Montague. While mowing those fields on fall days, Tom continually asked himself, "What is going to happen to this farm?" His concerns got more serious when the landowner became ill. "What a beautiful place," Tom thought, "and what a shame if it goes to house lots."

Tom told the owners that he would be interested in purchasing their farm if they were ever willing to sell it. At the same time, he contacted staff at the APR program, explained his situation, and asked: "Would you be willing to help me if something came up?" With the landowner's consent, Tom invited the APR staff to visit the farm.

Tom's planning turned out to be critical to saving the farm. During the last months of his life, the old landowner expressed his desire to keep the land in farming, and asked his wife to give the Beauchesnes the opportunity to purchase the farm before she made any other arrangements. When he passed away, his widow gave Tom and Jackie three months to decide whether they wanted the land. Because the APR staff knew the property and had already determined that it was worth protecting, the state was able to make an offer quickly.

With help from Franklin Land Trust Director Mark Zenick, the Beauchesnes negotiated a series of complex agreements to acquire the farm. To sweeten the deal for the Commonwealth and the town, they agreed to sell restrictions on both the new farm and their 23-acre home farm a few miles away. The town, says Tom, was particularly anxious to see both properties protected. "We have people that walk or bike this road from downtown all the time, and they say it is one of the prettier areas. They were really concerned with what was going to happen with it, so they bent over backwards to help me," he remembers. The farm is also in the area targeted for protection as part of the Silvio O. Conte National Wildlife Refuge, notes Tom, which increased the town's desire to protect the land. The Beauchesnes' other parcel of land sits over the town's water supply, and development could have caused problems. The town of Montague contributed to the cost of purchasing the restrictions.

The Beauchesnes divided the land on their home farm from the house and barns. They sold an *apr* on the land, and the remainder of the property to a buyer who agreed to give them a seven-year lease on the barns. This was important, Tom explains, because after buying the new farm, they wouldn't have the cash to build a barn on it immediately. Tom and Jackie kept the land from their old farm, but wanted to move to the farmhouse on the new land. To make this work for the widow, Tom built her a new house next door. The deal was closed in 1995.

Tom now sees the process of protecting the two farms as a pivotal moment for his family. "I think it forces people to make sure it is really what they want," he reflects. "...[I]t forced me to sit down with my family and find out what they wanted to do." One exciting result of the discussions was that Tom and Jackie's older son decided to come back and work on the farm after his graduation from the Stockbridge School of Agriculture at the University of Massachusetts.

Based on their son's decision, Tom and Jackie developed a long-term plan to build up their operation to the point where it can support three people. Elements of that plan include clearing more land, re-seeding hayfields, repairing an old barn and building a new one to store hay through the winter, establishing a nursery and a cut-flower business,

expanding the beef herd and retailing vegetables from a roadside stand. Owning the new farm has given the Beauchesnes the security to be innovative and to make long-term investments in the land. "I know that it's there and that nothing's going to happen to it now," says Tom with confidence. Eventually, he hopes to buy more land in the area. "What I don't use, my son will," he predicts.

Tom has nothing but good words for the APR program. "[It's] the greatest thing for a young person...or someone like myself, not inheriting the farm or not buying it from a relative where it was really cheap. I wouldn't have purchased the place if I had to have a mortgage as big as it would have taken without the APR people. I didn't want to jeopardize my family."

The Beauchesnes are very grateful for the support they received from both the state and the local community. "I didn't know...that so many people cared about what happened to the property until I went to the meetings and heard what people had to say," Tom remembers. "It was nice to hear that." Now, he feels that he has a responsibility to the town and the state to make his farm successful. "I...always want to be known as a success of the program," he explains. "I always feel an obligation...to make sure it stays a working farm."

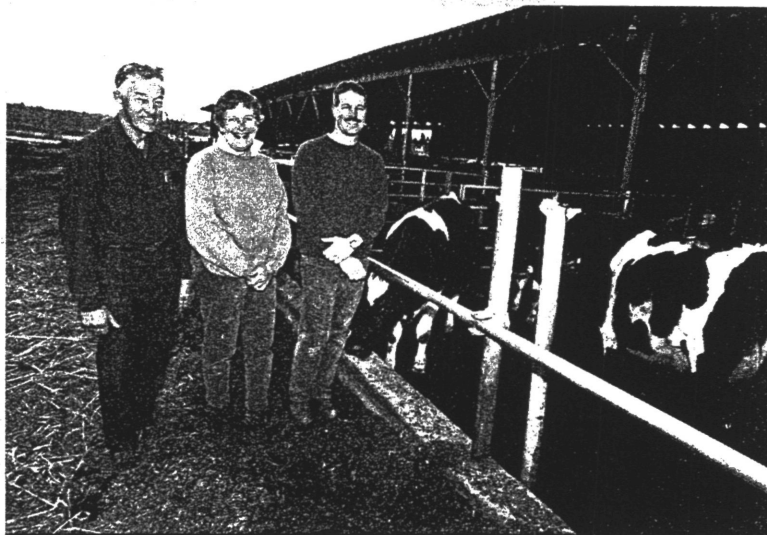
#### Changes in farming operations since the sale of *aprs* or the purchase of protected land

Telephone interviewers asked farmers whether they had made any changes on their farms since they sold an APR or purchased protected land. Nearly 75 percent of respondents had made at least one change (see Table 2 for responses). The most commonly cited change was improvements in farm buildings, mentioned by 60 percent of respondents. Several farmers described repairs that they had made to their barns since selling *aprs*.

Table 2: Changes in farms since participation in the APR program

Improved existing buildings	60.0%
Established conservation practices	46.7%
Bought new farm equipment	37.3%
Increased tillable acreage	30.7%
Hired farm employees	30.7%
Established new farm management practices	28.0%
Changed product mix	26.7%
Established other farm practices	25.3%
Bought new farm management equipment	25.3%
Developed new products	20.0%
Developed new marketing techniques	20.0%
Opened or expanded a retail outlet	20.0%
Bought more livestock	17.3%
Bought more land	14.7%
Transferred ownership of operation	14.7%
Bought new farm buildings	10.7%
Made other changes	5.3%

### Williams Family Farm Hatfield



For the Williams family of Hatfield, farming is more than a way to make a living—it is a 300-hundred year-old institution. Mary and Gordon Williams' 175-acre farm dates back to the 1690s, when the colonial Governor Bradford deeded the land to Mary Belden Williams' ancestors. Since then, at least 10 generations have carefully maintained the productivity of the land and passed it on to their children. Over the centuries, the rich river valley soil has enabled the family to grow a wide variety of crops, including vegetables and potatoes, hay and feed corn. Beef cattle and sheep have grazed the land in the past. Since the 1960s, the family has devoted most of its efforts to a dairy operation.

Mary's parents set up the farm as a family-held corporation. Mary and Gordon received stock from the Beldens over their time on the farm, and then shared ownership with their children, who lived off the farm. For many years, it was not clear if any of the children were interested in farming. Then, in the 1980s, their son, Darryl, decided to leave teaching and come back to the farm full time.

Gordon found out about the APR program through his involvement in Farm Bureau and the Hampshire County Conservation District. The family applied to the program to help them achieve several goals. "The land was a gift to me, and I always felt I had no right to derive a profit by selling pieces of it off for development," explains Gordon.

The Williamses also used the program to help transfer their land and operation to Darryl and his wife, Lucinda. Mary and Gordon used some of the cash from the sale of the *apr* to buy shares of the corporation from the family members who were not interested in farming. Consolidating the stock and restricting use of the land eliminated the temptation to sell a building lot to help out a relative who might need cash or a place to live, or to improve the corporation's year-end financial statement. The change in farm structure made it much easier for Mary and Gordon to make decisions and plan for the future.

Finally, the APR funds helped the family make some important investments in the farm. One improvement was the installation of a new manure storage system. Previously, the farm had a small storage facility that had to be emptied every two months. This was a problem in winter when the ground is frozen and in summer when all the cropland is in use. The new system can store six months of waste. This allows Gordon and Darryl to spread the manure in spring and fall for maximum benefit to their crops and minimum impact on local water and air quality. The investment has proved to be profitable as well as good for the land: The family is saving \$3,000 to \$4,000 per year on fertilizer.

Other investments in the farm included improvements to a milking parlor, renovations to the barn to keep the cows cool in the summer and an upgraded heifer facility. These changes increased animal comfort, decreased the labor needed to run the operation and improved efficiency. The family now raises all of their own replacement cows and produces a surplus of silage that they sell to other farmers.

Darryl credits the APR program with “pushing us into the 20th century and keeping us viable.” Without APR, the family feels that they would have had to make big sacrifices. They would be much farther behind in their debts, explains Gordon, and they would not have been able to improve their facilities.

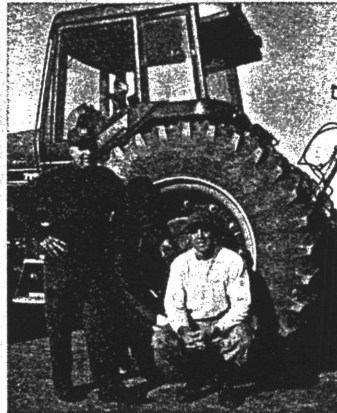
The Williamses are not shy about advising other farmers to participate in the APR program. They have seen neighbors who have sold their land for development and have been very disappointed in the end. “You think you’re going to make big money,” Gordon warns, “but it’s shortsighted to sell it off...once you sell the land it is gone—you’ll never get it back.” He feels very fortunate to have had the opportunity to protect the land. “We’re lucky to have the next generation,” he explains. “We have every intention of keeping it [the land] in the family as long as they can keep farming viable, here and in this Valley,” adds Darryl.

Darryl and Gordon still worry about milk prices and the low return from dairy farming. But the long history of their farm and the productivity of the soil suggest that many other agricultural uses of the land are possible if the milk business goes sour. The Williams’ decision to protect the farm has insured that future generations will have the opportunity to make a living from the land that has sustained the family for more than three centuries.

Improving or restructuring the use of farm buildings was cited by 31.3 percent of farmers as the most successful change made to their operations since participation in the APR program. Farmers believe that these improvements have increased both the value and utility of the buildings.

Approximately 27 percent of the 55 farmers who made changes considered purchasing livestock, buying more land or increasing tillable acreage to be their most important investment. One family purchased land that they had been renting from a distant relative. The land was an important part of the operation, it had been in the family for more than 100 years, and it was already protected by an APR, which made it affordable. A small-fruit grower explained that acquiring additional land facilitated crop rotations.

## Melnik Family Farm Deerfield



In the 1970s, brucellosis wiped out Stephen and William Melnik's entire herd of nearly 400 cows. Dairy farming is a difficult business in the best of circumstances, and many farmers who lost their herd would have given up, sold some land and tried a new occupation. But the Melniks have been farming for a long time and have learned how to deal with setbacks and obstacles. Stephen and William inherited their farm from their parents, who took over the farm from their parents. After the epidemic, the brothers just bought more cows and started over again.

The Melnik family farm in Deerfield was founded in the 1920s as a small dairy and vegetable farm. Now, Stephen says, the farm is one of the larger dairies in the state with 220 milking cows, despite the fact that the operation is much smaller than it was in the 1970s. The Melniks grow pumpkin and squash as a sideline to the dairy business and do some custom work for other farmers.

When Stephen's sons, Peter and Mark, decided that they were committed to staying on the farm, the family faced the challenge of building an operation that could support the fourth generation of Melniks. "We've gone from grandfather to the brothers to four families supported by the farm," reflects Peter. "To keep up with the cost of living, you have to increase your size."

In the 1970s, Stephen and William owned 650 acres. On paper, their land was worth a small fortune, but like many farmers, the Melniks were land rich and cash poor. APR seemed like a good tool to free up some of their equity. Stephen describes his thoughts about the program this way: "If you're in this game of farming for a lifetime and the next generation hopes to farm, you are kind of cashing in on your equity. We want to actively farm, farming is in our blood. Seeing the margin of profit in the farming industry is so tight, it's a way of loosening up a lot of things."

With the proceeds from selling an *apr* on their original 250 acres, the Melniks financed the purchase of two additional parcels of land. In one case, remembers Stephen, the brothers bought land right out from under a developer. They used the APR program to protect the new land from future development. To buy land any other way is very difficult, explains Peter. He describes a parcel of land that the family purchased in the 1980s for \$10,000 per acre. He estimates that it would take "about 100 years of growing corn for cows to pay for that out of the profits of the land." Peter credits the APR program with creating "a way to buy more farmland and enable four families to live here instead of just one."

The land that was purchased through the APR program has been instrumental in some changes in the operation. The Melniks grow all of their own feed and sell surplus silage to other farmers. By increasing their land base, the family also became eligible for a USDA Natural Resources Conservation Service program aimed at improving water quality within the Deerfield River Valley watershed. The program helped the farm install a manure slurry system.

The Melniks rent an additional 200 acres of land to grow corn and alfalfa. Some of their rented fields are also protected by *aprs*. One of their landlords commented that she is happy that the Melniks are using and caring for her land, and is grateful to have the rental income to help pay the bills. The Melniks like the arrangement because they have the security of knowing that the landowner is committed to agriculture and will not be selling to a developer at any moment.

Without the APR program, says Stephen, the Melnik farm "still would be here, but a lot of the land would be developed. We would have sold front lots and farmed the back," he reflects. Stephen is happy to have avoided that scenario. "With the smells and the noises [of a dairy farm]," he explains, "you don't want a lot of families around."

The Melniks are strong supporters of the APR program, but they still wish that it was not necessary. "I wish we got enough for our products so that we could compete with other industries for land," says Stephen. "Sometimes it seems backwards. The simplest way to preserve the farmland is to preserve the farmer."

Thirty-two respondents believed that the APR program helped them implement conservation practices. Twenty of the 35 farmers who participated in the personal interviews mentioned having installed or having plans to install at least one conservation measure. Most of the farmers contacted spoke about their strong feelings for the land, and considered themselves to be careful stewards of the environment and natural resources.

While the majority of farmers contacted believe that the APR program has facilitated successful changes in their operations, several sounded a cautionary note. "APR is not the answer to low prices and high operating costs," observed one grower who made significant management changes in his operation after selling an *apr*. "You have to make some changes, you can't continue the same way you were going." Simply using APR money to pay off debt and farming the same way you have been for decades, he explains, "is a dead-end street. You have to look really hard [at your operation]," he advises other farmers, and ask "what has and has not worked? You need a business plan and a marketing plan, that's for sure."



## Shearer Family Farm Colrain



The Shearer family's dairy operation in Colrain bucks the conventional wisdom of the "bigger is better" approach to dairy farming. Larry Shearer and his son, Kenny, borrowed an idea developed by farmers half a world away, in New Zealand. With seasonal dairying, the Shearers have accomplished what most experts say is impossible: They support two families with a small milking herd of 50 cows.

The Shearers began experimenting with new approaches to dairying in the early 1980s with rotational grazing.<sup>14</sup> Intensive pasture management cut feed costs and improved farm profitability, but the operation was still very labor intensive. With Larry's retirement in the not-so-distant future, Kenny approached his father with a decision. "Dad, I'm not going to keep farming the way we've been doing it," he announced. "We were making money," says Larry, "but it was the quality of life, the stress of no vacation," that brought Kenny to the conclusion that something needed to change.

The New Zealand style of dairying emphasizes reducing the costs of production rather than increasing output. In a seasonal dairy operation, all the cows are bred to calve during a short time period. This allows the farmer to manage the entire herd as a group. The cows have the same nutritional requirements and similar needs for veterinary care when they are pregnant and calving. They are dry in late winter to early spring, which reduces the need to store feed, cuts costs and allows the farmer to take a vacation. One of the biggest advantages of converting to seasonal dairying is that it requires no capital investment. "It's strictly a management thing," explains Larry.

Larry and Kenny started adjusting their breeding cycles in 1988. Within a few years, the benefits of the new system were obvious. Feed costs went down by 25 percent and veterinary bills decreased by 75 percent. "For eight months of the year, we don't even see a veterinarian around here," boasts Larry. "There's two months where you are making no milk so...your electric bills go way down," he continues, smiling. "It's the time to take a vacation if you want to...all you have to do is hire somebody to come in...and feed the cows once a day."

When agricultural experts look at the figures from the Shearer farm, they shake their heads. "We only have about a 15,000- to 16,000-pound herd average," Larry explains. "Everything you read says that if you don't have at least a 20,000-pound average, you are going behind, no way you can survive, no matter what your size. When you say a 15,000-pound average on 50 cows...our figures are so far off—different than anything they can come up with—that [they conclude] ours are wrong."

But the Shearer's farm is one of the few dairies in the region where the figures *do* make sense. "We're well satisfied with our standard of living. There's a swimming pool and a couple good cars out there. Everything is paid for...And nobody works off the farm here," says Larry with pride. "We couldn't be happier. We plan to stay with dairying for the foreseeable future. We are able to make a good living on the present price of milk. It would be easier if it were higher, but the price of milk is not a problem."

Very few New England dairy farmers share Larry's optimism. Lately, Larry says, interest in seasonal dairying has been increasing, and he has been traveling around the region, speaking to farmers and extension agents to promote the concept.

For the Shearers, the change to seasonal dairying was the most important step in protecting their farm. "[We] think that it is one of our best opportunities to keep the small dairy viable, and as a result, if it's viable, you keep the land open, you keep the land farmed," says Larry. "We would not have gone into [APR] if we had not...already gone into seasonal dairying and found out that the way we're doing it would be a viable enterprise for the foreseeable future."

The APR program helped the Shearers meet a different challenge. With the operation profitable and manageable, Kenny was willing to assume responsibility for the farm. Larry wanted to retire and turn the land, cows and machinery over to his partner, but he also wanted to share his assets with his other four sons, who were not interested in farming. As a board member of the Franklin Land Trust, Larry was familiar with the APR program and knew it could be a valuable tool for farm estate planning. He invested the proceeds from selling an *apr* on the farm to help fund his retirement and gave the land and the operation to Kenny, more or less as a gift. The rest of the estate, including the APR money, will eventually go to Kenny's brothers.

The APR program had another, unanticipated benefit for the Shearers. Recently, officials from the neighboring town of Shelburne Falls started eminent domain proceedings on a portion of the Shearers' land. Normally, when APR land is involved in a taking, the agency that initiates the proceeding has to take the entire parcel and compensate the Commonwealth for the restriction. Larry called the Department of Food and Agriculture for help. Department officials called the water district and told the local agency to work with the Shearers on a farm management plan that would protect water quality. "DFA interceded on my behalf, and they have made an exception," says Larry. "That is an advantage. The state has a vested interest because they spent money on this land to keep it [in] farming and seem more than willing to express their political clout to help us keep it in agriculture."

Larry Shearer officially retired three years ago, but only in the sense that the ultimate responsibility for the farm and its future now belongs to Kenny. "I'm actually working hard, if not harder than I ever did," admits Larry. "I am enjoying it and I'm not tied down now. I can pick up and leave at any time. I feel good," he says.

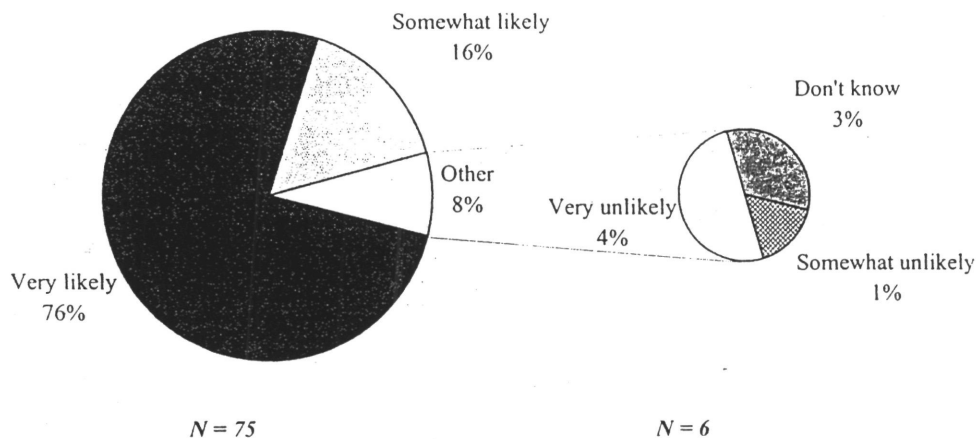
The Shearer dairy farm is part of a block of more than 1,000 acres of protected land in a three-mile radius. Larry's brother David's apple orchard abuts the dairy to the north. David sold an *apr* on his land in 1996. "The Shearers have been in this town since the mid-1700s," reflects Larry. "We're kind of married to the concept of staying. APR fits in with that concept," he explains.

The Shearers' land lies between the well-traveled Mohawk trail and the Vermont border. Driving up the road, past the rolling pastures and grazing cows, apple orchards and old red barns, it is easy to imagine the landscape of centuries past. But it's important to look behind the beautiful scenery to the farm businesses that maintain the landscape. The Shearer's land is protected by an *apr*. Their dairy operation is protected by hard work, smart planning and old-fashioned Yankee ingenuity.

Of the 75 farmers interviewed by telephone, 51 voiced no dissatisfaction with the APR program. When the farmers were asked if, based on their experience, they would participate in the program again, 92 percent said that they would be either "very likely" (57 farmers) or "somewhat likely" (12 farmers) to do so. Only four respondents believed that they would be "somewhat" or "very" unlikely to participate in the program again given their experiences (see Figure 10).

*"If any [more] local APR land became available, we'd be interested."*

Figure 10: Would you participate in the APR program again?





# FACT SHEET

## STATUS OF STATE

## PACE PROGRAMS

### DESCRIPTION

As of July 2002, at least 24 states had authorized state-level Purchase of Agricultural Conservation Easement (PACE) programs. This table displays the status and summarizes important information about farm and ranch land protection programs in 19 states that had acquired funding and easements as of January 2002.

### EXPLANATION OF COLUMN HEADINGS

#### Year of Inception/Year of First Acquisition

"Year of Inception" is the year the law creating the PACE program was approved. "Year of First Acquisition" is the year the program acquired its first easement.

#### Easements/Restrictions Acquired

Number of agricultural conservation easements or conservation restrictions acquired through the state program. This number does not necessarily reflect the total number of farms/ranches protected, as some programs acquire a property in stages and may hold multiple easements on the same farm/ranch. Some state programs do not hold easements but instead provide funds for easement purchase to local governments or land trusts.

#### Acres Protected

Number of acres protected by the program to date.

#### Program Funds Spent to Date

Dollars spent by each program to acquire easements on farms/ranches. Amounts may include unspent funds that are encumbered for installment payments on completed projects. Unless otherwise noted, this figure does not include either incidental land acquisition costs, such as appraisals, insurance and recording fees, or the administrative cost of running the program. These figures may not reflect the total cost of acquiring easements, as some state PACE programs receive matching funds from local governments, as well as

contributions from local land trusts and donations from landowners.

#### Local Contributions to Date

Funds contributed by local governments (e.g., counties) toward state program acquisitions.

#### Funds Spent Per Capita

The amount spent on farmland protection per person based on state population figures for 2001 from the U.S. Bureau of the Census.

#### Funds Available

Program funds available for the current fiscal year to acquire easements on agricultural land.

#### Funds Available Per Capita

Program funds available per person based on state population figures for 2001 from the U.S. Bureau of the Census.

#### Outstanding Applications

Backlog of applications reported by program administrators.

#### Funding Sources

Sources of funding for each program. This list does not include contributions from local governments and land trusts or donations from landowners. "Transportation funding" refers to federal money disbursed under the Intermodal Surface Transportation Efficiency Act of 1991 and the Transportation Equity Act for the 21st Century (ISTEA and TEA-21). ISTEA provided funding for a broad range of highway and transit programs, including "transportation enhancements." Easement acquisitions that protect scenic views and historic sites along transportation routes are eligible for this program. TEA-21 was adopted in May of 1998, re-authorizing federal transportation spending through fiscal 2003. "FPP" is the federal Farmland Protection Program established in 1996 and re-authorized in the 2002 Farm Bill to provide matching funds to state, local, tribal and land trust agricultural easement acquisition programs. In addition to these sources of funding, several state programs reported financial contributions from private individuals or foundations.



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# PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS

State	Year of Inception/ Year of First Acquisition	Easements/ Restrictions Acquired	Acres Protected	Program Funds Spent to Date	Local Contribution to Date
California	1995/1997	49	13,480	\$16,169,595 ^	N/A
Colorado	1992/1995	79	88,585	\$26,948,065 ~^	\$5,000,000 ~
Connecticut	1978/1979	207	28,173	\$82,206,885 ^	\$300,000
Delaware	1991/1996	309	65,117	\$69,378,401 ^	\$0
Kentucky	1994/1998	22	4,708	\$2,295,176	\$0
Maine	1987/1988	7	2,555	\$1,620,000	\$0
Maryland	1977/1980	1,395	198,276	\$258,048,105 ^	\$76,953,425
Massachusetts	1977/1980	561	50,664	\$126,064,519	\$11,274,576
Michigan	1974/1994	57	13,875	\$26,198,014	\$15,000
Montana ❖	1999/2000	8	9,923	\$888,000	\$0
New Hampshire					
Agricultural Lands Preservation Program	1979/1980	31	2,864	\$5,000,000 ^	\$15,000
Land Conservation Investment Program ❖	1987/1988	36	6,232	\$5,349,008	\$0
New Jersey	1983/1985	635	86,986	\$248,958,246 ^	\$126,222,445
New York	1996/1998	43	6,843	\$13,921,720 ^	\$7,712,198
North Carolina	1986/1999	30	4,275	\$2,442,000 ^	\$342,000
Ohio	1999/1999	3	374	\$0	\$0
Pennsylvania	1988/1989	1,657	209,338	\$419,296,400	\$141,325,220
Rhode Island	1981/1985	45 ~	3,719 ~	\$15,017,580 ~	\$5,676,276 ~**
Utah	1999/2000	10	30,300	\$9,450,000 ^	\$320,000
Vermont	1987/1987	297	96,000	\$50,000,000 ^	\$175,000
STATE TOTALS		5,481	922,287	\$1,379,251,714	\$375,331,140
LOCAL TOTALS #		1,515	213,654	\$604,598,567	
NATIONAL TOTALS		6,996	1,135,941	\$1,983,850,281	

# STATUS OF STATE PROGRAMS AS OF JANUARY 2002

Funds Spent Per Capita	Funds Available	Funds Available Per Capita	Outstanding Applications	Funding Sources
\$0.47 ~	\$5,000,000	\$0.14	24	Appropriations, bonds, FPP
\$6.10	\$6,000,000	\$1.36	6	Portion of lottery proceeds, FPP
\$24.00	\$2,000,000	\$0.58	N/A	Bonds, FPP
\$87.14	\$7,000,000	\$8.79	170	Appropriations, bonds, portion of lawsuit settlement, transportation funding, FPP
\$0.56	\$11,000,000	\$2.71	141	Appropriations, bonds, FPP
\$1.26	\$1,000,000	\$0.78	10	Appropriations, bonds, royalties from credit card, FPP
\$48.01	\$27,303,876	\$5.08	N/A	Agricultural transfer tax, real estate transfer tax, FPP
\$19.76	\$6,000,000	\$0.94	108	Bonds, transportation funding, FPP
\$2.62	\$5,000,000	\$0.50	1,225	Repayment of tax credits by landowners withdrawing from the state's circuit breaker program, FPP
\$0.98	\$0	\$0.00	14	Appropriations, FPP
\$3.97	\$0	\$0.00	0	Appropriations, FPP
\$4.25	\$0	\$0.00	0	Bonds
\$29.34	\$80,000,000	\$9.43	630	Appropriations, bonds, portion of state sales and use tax, FPP
\$0.73	N/A	N/A	37	Bonds, FPP
\$0.30	\$192,000	\$0.02	8	Appropriations
\$0.00	\$6,250,000	\$0.55	0	Appropriations, bonds
\$34.12	\$40,000,000	\$3.26	1,600	Appropriations, bonds, cigarette tax, roll-back property tax payments, FPP
\$14.18 ~	N/A	N/A	N/A	Bonds, FPP
\$11.28	\$2,000,000	\$0.88	3	Appropriations
\$81.55	\$4,500,000	\$7.34	60	Appropriations, bonds, property transfer tax, Farms for the Future pilot program, transportation funding, FPP
	\$203,245,876		4,036	
	\$185,481,972		908	
	\$388,727,848		4,944	



NOTES

- ❖ The Montana Agricultural Heritage program is scheduled to sunset in 2003. The New Hampshire Land Conservation Investment Program was terminated in 1993.
- ~ Figures are from 2001 or earlier data.
- ^ “Program Funds Spent to Date” includes incidental land acquisition costs and/or personnel costs. North Carolina program spending only covers transaction costs and future monitoring costs, net landowner compensation.
- \*\* “Local Contributions to Date” includes contributions from land trusts and private citizens.
- # For a summary of local activity refer to the “Status of Local PACE Programs” fact sheet.

STATUS OF STATE

PACE PROGRAMS



# FACT SHEET

## STATUS OF

## LOCAL PACE

## PROGRAMS

### DESCRIPTION

As of January 2002, there were at least 44 independently funded, local Purchase of Agricultural Conservation Easement (PACE) programs in 15 states. This table displays the status and summarizes important information about these local farm and ranch land protection programs.

### EXPLANATION OF COLUMN HEADINGS

#### Jurisdiction

Name of jurisdiction sponsoring program.

#### Year of Inception/Year of First Acquisition

"Year of Inception" is the year the ordinance creating the PACE program was approved.

"Year of First Acquisition" is the year the program acquired its first easement.

#### Total Easements/Restrictions Required

Total number of agricultural conservation easements or conservation restrictions acquired through the program. This number includes joint projects with state and/or county programs and independent projects completed by the local program. This number does not necessarily reflect the total number of farms/ranches protected, as some programs acquire a property in stages, and may hold multiple easements on the same farm/ranch.

#### Total Acres Protected

Number of acres protected by the program to date.

#### Total Program Funds Spent to Date

Dollars spent by each program to acquire easements/restrictions on farms/ranches. This number includes matching funds spent on joint projects. Amounts may include unspent funds that are encumbered for installment payments on completed projects. Unless otherwise noted, this figure does not reflect either incidental land acquisition costs, such as appraisals, insurance and recording fees, or the administrative cost of running the program.

These figures may not reflect the total cost of acquiring easements, as some local PACE programs receive contributions from local land trusts and/or donations from landowners.

#### Independent Easements/Restrictions Acquired

Number of easements/restrictions acquired through independent projects. This number excludes easements/restrictions acquired through joint projects with county and/or state programs. This number does not necessarily reflect the total number of farms/ranches protected, as some programs acquire a property in stages, and may hold multiple easements on the same farm/ranch.

#### Independent Acres Protected

Number of acres protected through independent projects. This number excludes acres protected through joint projects with county and/or state programs.

#### Independent Program Funds Spent to Date

Dollars spent by each program to acquire easements/restrictions on farms/ranches through independent projects. This number excludes dollars spent on joint projects with county and/or state programs. Amounts may include unspent funds that are encumbered for installment payments on completed projects. Unless otherwise noted, this figure does not reflect either incidental land acquisition costs, such as appraisals, insurance and recording fees, or the administrative cost of running the program. These figures may not reflect the total cost of acquiring easements, as some local PACE programs receive contributions from local land trusts and donations from landowners.

#### Funds Available

Program funds available for the current fiscal year to acquire easements on agricultural land.

#### Outstanding Applications

Backlog of applications reported by program administrators.



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# PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS

Jurisdiction	Year of Inception/ Year of First Acquisition	Total Easements/ Restrictions Acquired	Total Acres Protected	Total Program Funds Spent to Date	Independent Easements/ Restrictions Acquired	Independent Acres Protected
<b>CALIFORNIA</b>						
Alameda Co.	1993/1992	27	2,775	\$10,000,000	26	2,675
Marin Co.	1980/1983	46	30,657	\$19,750,000 ^	46	30,657
Sonoma Co. Δ	1990/1992	54	28,263	\$48,956,000	54	28,263
<b>COLORADO</b>						
Boulder	1967/1984	12	1,606	\$8,599,732 ^	12	1,606
Douglas Co.	1994/1995	5	27,808	\$15,800,000 ^	5	27,808
Routt Co.	1997/1998	7	2,515	\$1,664,550 ^	6	2,362
<b>ILLINOIS</b>						
Kane Co.	2001/2002	0	0	\$0	0	0
<b>KENTUCKY</b>						
Fayette Co.	2000/2002	0	0	\$0	0	0
<b>MARYLAND</b>						
Anne Arundel Co. Δ	1991/1992	83	8,679	\$25,200,000	49	4,629
Baltimore Co.	1979/1981	160	18,537	\$51,300,000	8	1,336
Calvert Co.	1992/1992	N/A	N/A	N/A	N/A	N/A
Carroll Co. ‡Δ	1979/1980	309	37,190	\$54,210,903	35	2,759
Frederick Co. ‡	1991/1993	114	17,296	N/A	26	2,892
Harford Co. Δ	1993/1994	185	26,800	\$48,900,000	97	17,035
Howard Co. Δ	1978/1984	146	16,738	\$187,560,000	75	12,801
Montgomery Co.	1988/1989	72	10,348	\$28,079,376	60	8,043
Washington Co.	1991/1992	41	7,332	N/A	1	125
<b>MICHIGAN</b>						
Peninsula Township Δ	1994/1996	31	2,030	\$2,774,210	28	1,781
<b>MONTANA</b>						
Gallatin Co.	1998/2000	4	907	\$564,500	3	587
<b>NEW HAMPSHIRE</b>						
Londonderry	N/A/1996	5	375	\$921,000	5	375
<b>NEW JERSEY</b>						
Morris Co.	1992/1996	56	3,835	\$46,701,384	19	561
<b>NEW YORK</b>						
East Hampton	1982/1982	11 ~	281 ~	\$5,500,000 ~	5 ~	157 ~
Pittsford	1995/1996	7	962	\$8,199,917	5 ~	629 ~
Southampton	1980/1980	N/A	N/A	N/A	27 ~	841 ~
Southold	1984/1986	67	1,318	\$11,512,250	61	1,096
Suffolk Co.	1974/1976	138	8,120	\$60,142,788 ^	128	7,533
Warwick	2001/1997	4	646	N/A	1	82
<b>NORTH CAROLINA</b>						
Forsyth Co.	1984/1987	27	1,605	\$3,000,000 ^	25	1,480
Wake Co.	1989/N/A	1	92	\$0	0	0
<b>PENNSYLVANIA</b>						
Buckingham Township	1996/1996	37	3,500	\$10,104,299 ^	14	744
Bucks Co.	1989/1990	63	5,770	\$40,000,000	10	691
Chester Co.	1989/1990	81 ~	7,386 ~	N/A ~	48 ~	3,944 ~
Lancaster Co. Δ	1980/1984	442	40,000	\$80,000,000	282	23,239
Plumstead Township Δ	1996/1997	15	1,195	\$4,362,949	9 ~	591 ~
Solebury Township	1996/1998	17	1,285	\$11,500,000 ^	13	851
<b>VIRGINIA</b>						
Albermarle Co.	2000/2002	0	0	\$35,000	0	0
James City Co.	2001/N/A	0	0	\$0	0	0
Loudoun Co.	2000/N/A	0	0	\$0	0	0
Virginia Beach Δ	1995/1997	44	6,021	\$7,180,747	44	6,021
<b>WASHINGTON</b>						
King Co.	1979/1984	209	12,880	\$54,700,000	209	12,880
San Juan Co.	1990/1993	20	1,676	\$2,566,320 ~ ^	20	1,676
Skagit Co.	1996/1998	28	2,200	\$2,700,000 ^	28	2,200
Thurston Co. ♦	1996/1998	19	940	\$2,300,000	19	940
<b>WISCONSIN</b>						
Dunn	1996/1997	12	1,764	\$1,605,485	12	1,764
<b>LOCAL TOTALS</b>					<b>1,515</b>	<b>213,654</b>
<b>STATE TOTALS #</b>					<b>5,481</b>	<b>922,287</b>
<b>NATIONAL TOTALS</b>					<b>6,996</b>	<b>1,135,941</b>

# STATUS OF SELECTED LOCAL PROGRAMS AS OF JANUARY 2002

Independent Program Funds Spent to Date	Funds Available	Outstanding Applications	Funding Sources
\$9,258,900	\$1,700,000	10	Mitigation fees and acquisitions, state grants
\$19,750,000 ^	\$3,000,000	2	Appropriations, state bonds, California Coastal Conservancy
\$48,956,000	\$10,000,000	40	Sales tax, state bonds
\$8,599,732 ^	N/A	N/A	Bonds, city sales tax
\$15,800,000 ^	\$6,500,000	N/A	Bonds, sales and use tax
\$1,415,356 ^	\$676,000	4	Property tax, state grants, FPP
\$0	\$5,000,000	0	Gaming revenue
\$0	\$21,378,600	9	Appropriations, bonds, state grant, FPP
\$16,000,000	\$3,000,000	14	Appropriations, bonds, FPP
\$3,841,199	\$6,800,000	40	Appropriations, bonds, sales tax, transportation funding, FPP
N/A	N/A		Appropriations, recording fee, FPP
\$1,625,059 ~	\$5,500,000	35	Appropriations, bonds, property tax, FPP
\$2,380,781 ~	N/A	N/A	Appropriations, recording fee, transportation funding, FPP
\$37,261,683	\$3,000,000	25	Appropriations, local real estate transfer tax
\$176,160,000	\$18,355,783	6	Bonds, local real estate transfer tax
\$22,500,000 ~	\$8,405,000	17	Appropriations, bonds, investment income, state grants, FPP
\$187,906	\$597,000	35	Appropriations
1,214,610	\$384,000	15	Property tax, state grants, transportation funding, FPP
374,500	\$3,700,000	4	Appropriations, bonds, property tax
21,000	\$1,000,000	1	Ag transfer tax, appropriations, bonds, state grants, transportation funding, FPP
1,058,980	\$5,500,000	11	Bonds, property tax
N/A ~	N/A		Bonds, county grants
\$6,092,248 ~	N/A	2	Bonds, state grants, FPP
\$7,300,000 ~	\$14,500,000	4	Bonds, county and state grants, real estate transfer tax, revenue from special district, FPP
\$10,129,750	\$10,800,000	6	Appropriations, bonds, property tax, real estate transfer tax, FPP
\$53,005,253 ^	\$8,500,000	52	Appropriations, bonds, state grants, FPP
N/A	\$7,220,000	13	Bonds
\$2,832,908 ^	\$0	35	Appropriations, state grants, FPP
\$0	N/A	N/A	Appropriations
\$5,353,419 ^	\$5,680,000	15	Bonds, property tax, FPP
\$1,616,540 ~	\$4,854,089	69	Bonds, FPP
\$18,500,000 ~^	N/A		Appropriations, bonds, interest from roll-back taxes, FPP
\$41,283,209	\$7,700,000	250	Appropriations, bonds, FPP
\$4,026,982 ~	N/A	31	Bonds, property tax, real estate transfer tax
\$10,100,000 ^	\$5,000,000	27	Bonds, property tax
\$0	\$1,000,000	11	Appropriations, transient lodging tax
\$0	\$1,000,000	0	Appropriations
\$0	\$8,980,000	75	Appropriations, transient lodging tax
\$7,180,747	\$3,730,000	13	Appropriations, cellular phone tax, property tax
\$54,700,000	N/A	N/A	Appropriations, bonds, FPP
\$2,566,320 ~^	\$921,500	N/A	Property tax, real estate transfer tax, timber excise tax
\$2,700,000 ^	\$900,000	10	Property tax, state grant, timber excise tax, FPP
\$300,000	\$0	N/A	Property tax
105,485	\$200,000	27	Bonds, property tax, state grants, FPP
\$604,598,567	\$185,481,972	908	
1,379,251,714	\$203,245,876	4,036	
1,983,850,281	\$388,727,848	4,944	

## STATUS OF LOCAL PACE PROGRAMS

### EXPLANATION OF COLUMN HEADINGS, CONTINUED

#### Funding Sources

Sources of funding for each program. This list does not include contributions from municipal governments and land trusts or donations from landowners. "Transportation funding" refers to federal money disbursed under the Intermodal Surface Transportation Efficiency Act of 1991 or the Transportation Equity Act for the 21st Century (ISTEA and TEA-21). ISTEA provided funding for a broad range of highway and transit programs, including "transportation enhancements." Easement acquisitions that protect scenic views and historic sites along transportation routes are eligible for this program. TEA-21 was adopted in May of 1998, re-authorizing federal transportation spending through fiscal 2003. "FPP" is the federal Farmland Protection Program established in 1996 and re-authorized in the 2002 Farm Bill to provide matching funds to state, local and tribal agricultural easement acquisition programs. In addition to these sources of funding, several local programs reported financial contributions from private individuals or foundations.

#### NOTES

△ These jurisdictions enter into installment purchase agreements (IPAs) with landowners. IPAs are structured so that landowners receive semi-annual, tax-exempt interest over a term of years (typically 20 to 30). The principal is due at the end of the contract term. Landowners can convert IPAs into securities that can be sold in financial markets to recover the principal at any time. Jurisdictions often purchase U.S. zero-coupon bonds to cover the final balloon payment. The interest payments are generally funded by a dedicated revenue source, such as a real estate transfer tax. Therefore, "Program Funds Spent to Date" is relatively low for these jurisdictions.

‡ Maryland's Carroll and Frederick counties offer "critical farms" programs. The programs allow landowners to sell options to buy their easements to the county for 75 percent of appraised easement value. In exchange, landowners agree to apply to the state PACE program. If the state approves the application, the landowner must repay the county from the proceeds. If the state application is not approved within five years, the county owns the easement, unless the landowner repays the program with interest. Figures for Carroll and Frederick counties include critical farm projects that have not yet been approved by the state.

◆ The Thurston County program reached its goal in 2000 and will not acquire additional easements.

~ Figures are from 2001 or earlier data.

# For a summary of state activity refer to "Status of State PACE Programs" fact sheet.

^ "Program Funds Spent to Date" includes incidental land acquisition costs and/or personnel costs.

#### ALL MARYLAND COUNTIES

In addition to local sources of funding, Maryland counties receive a portion of the state's agricultural land transfer tax.



# FACT SHEET

## PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS: SOURCES OF FUNDING



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### DESCRIPTION

Purchase of agricultural conservation easement (PACE) programs compensate property owners for restrictions on the future use of their land. One of the biggest challenges in administering PACE programs is figuring out how to pay for them. It is necessary to have reliable sources of revenue to allow farmers and ranchers to incorporate the sale of easements into their long-term financial plans. This fact sheet provides an overview of funding sources and identifies some issues to address when deciding how to pay for easements.

### BONDS

General obligation bonds are the most popular source of funding for PACE. Bonds are essentially IOUs issued by cities, states and other public entities to finance large public projects. The issuer agrees to repay the amount borrowed plus interest over a specified term – typically 20 to 30 years. General obligation bonds are backed by the "full faith and credit" of the issuer. This means that the government entity is obligated to raise taxes or to take whatever action is within its power to repay the debt.

State rules guiding the issuance of bonds vary. General obligation bonds may require approval by the legislature or voters or both. Almost half of the states limit issuance of bonds through constitutional or statutory requirements. For more information contact state bond authorities and independent underwriting experts.

### Benefits

- Bonds allow programs to commit large sums to farmland protection while land is still available and relatively affordable.
- Bonds distribute the cost of acquisition over time.

### Drawbacks

- Interest paid on bonds increases the overall cost of the program.

### TAXES

#### Property Taxes

Property taxes are a popular source of funding for local PACE programs. Property taxes are levies on the value of real estate. Municipalities use dedicated increases in the tax rate to pay for easement acquisitions and to cover debt service on bonds.

States create general guidelines and may set limits for computing tax rates and assessing properties. Public referenda usually are required to ratify a dedicated property tax increase. The state of Washington gives local governments the option to increase property taxes for land conservation. For more information on this potential funding source, consult local assessors and local government administrators.

#### Real Estate Transfer Taxes

A real estate transfer tax is a levy on property sales. It is typically a small percentage of the purchase price and is usually paid by the buyer. Transfer taxes may be used to acquire land directly or to cover financing costs on bonds. Transfer taxes ensure that the level of funding is tied to development activity—funding increases when the real estate market is hot and drops off when the market cools.

Legislatures can enact statewide transfer taxes or laws authorizing local jurisdictions to levy transfer taxes. In Washington, all counties may levy up to 1 percent of real estate sales. In contrast, the Maryland legislature grants transfer tax authority to local jurisdictions on a case-by-case basis. Enabling legislation typically requires taxing authorities to secure voter approval. For more information, consult local government administrators, municipal attorneys or state legislators.

#### Sales Taxes

Sales taxes are levies on retail sales imposed by states, local governments and special districts. Sales taxes may be broad-based or targeted to a particular item.



## PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS: SOURCES OF FUNDING

State constitutions and laws dictate whether local governments have the authority to levy sales taxes. According to the National Association of Counties, fewer than half of the nation's counties have the authority to levy a sales tax. However, there are efforts in at least two states to expand the capacity of local jurisdictions to raise revenues for farmland protection. Farmland protection advocates should check with local government administrators or state legislators for more information about this potential source of revenue.

### *Benefits*

- In general, taxes provide a regular stream of revenue.
- Taxes on retail sales ensure that tourists help protect the open land they are enjoying.

### *Drawbacks*

- Taxes are unpopular.
- Raising or levying new taxes requires well-organized campaigns to generate and sustain public support.
- Sales and property taxes are regressive and tend to fall disproportionately on lower-income people.
- Sales taxes are location-based and future revenues could be undermined by internet commerce.

## ANNUAL APPROPRIATIONS

State and local governments can allocate a dollar amount to farmland protection from general or discretionary funds. This approach has been used by state legislatures to provide start-up money and to supplement other revenue sources. For example, the Vermont legislature appropriated \$20 million to the Vermont Housing and Conservation Trust Fund in 1988 to get the program off the ground. Since then, the program has received a portion of the state property transfer tax and funds from state bonds. In general, annual appropriations are not used as a primary funding source for PACE programs.

State agencies develop spending proposals that are incorporated into the state budget. Legislators may also introduce bills to allocate funds to particular programs. Town and county boards make spending recommendations that may be included in the local budget. Sometimes opportunities arise to earmark budget surpluses at the end of the fiscal year.

### *Benefits*

- Expenditures reflect the will of the current electorate.
- This approach saves financing costs.

### *Drawbacks*

- Funding is unpredictable from year to year.

## FEDERAL FUNDS

### **Farmland Protection Program**

The 1996 Farm Bill established the Farmland Protection Program to protect farmland from conversion to nonagricultural uses. The FPP provides matching grants to established state, local and tribal programs, up to a maximum of 50 percent of the final negotiated sales price of conservation easements. The farm bill authorized up to \$35 million over six years.

Eligible PACE programs submit proposals to USDA Natural Resources Conservation Service state offices. NRCS has published three requests for proposals between 1996 and 1998. During these application cycles, the USDA Natural Resources Conservation Service disbursed the entire \$35 million appropriation. NRCS will request additional funds for the FPP for fiscal year 2000. For more information contact an NRCS state office or visit NRCS' web site at <http://www.nrcs.usda.gov/>.

### **Hazard Mitigation Grant Program**

The Hazard Mitigation Grant Program was created in November 1988 by Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, assists states and localities in implementing mitigation measures following a Presidential disaster declaration. Funds have been used to purchase conservation easements on farmland located in the 100-year floodplain.

State, local and tribal governments and private nonprofit organizations that serve a public function are eligible for funding. Projects must fall within the state and local government's overall mitigation strategy for the disaster area, and comply with program guidelines to qualify. HMGP will cover up to 75 percent of project costs. In kind services can be used to meet the state or local cost-share match. Each state sets its own priorities for funding and administering this

## PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS: SOURCES OF FUNDING

program. To apply, contact the state emergency management agency, state hazard mitigation officer or a FEMA regional office. Information is also available online at <http://www.fema.gov/mit/hmgrp.htm>.

**Transportation Funding (ISTEA and TEA-21)**  
The Intermodal Surface Transportation Efficiency Act of 1991 provided funding for a broad range of highway and transit programs, including "transportation enhancements." Enhancements are intended to improve the cultural, aesthetic and environmental quality of transportation routes. Easement acquisitions that protect scenic views and historic sites along transportation routes are eligible for this program. The Transportation Equity Act for the 21st Century, adopted in May of 1998, re-authorized transportation spending through fiscal 2003. Funding for enhancements was increased by nearly 40 percent nationwide, to \$3.6 billion.

Private conservation organizations and public entities are eligible to apply for enhancements money. The program covers up to 80 percent of project costs. Contact state departments of transportation for more information about the application process.

### *Benefits*

- Federal grant programs that fund agricultural easement acquisitions make farmland protection a goal for the federal agencies that administer these programs.
- Federal grants provide much-needed assistance to farmland protection programs.
- HMGP, ISTEA and TEA-21 demonstrate that agricultural land provides floodwater storage and scenic vistas along transportation corridors, which helps make the case for farmland protection.

### *Drawbacks*

- Funding is not predictable from year to year.
- HMGP and ISTEA funds are rarely used for agricultural easement acquisitions.
- Easement values in floodplains may be too low to encourage participation in the HMGP.

## CREATIVE SOURCES OF FUNDING

### **Cellular Phone Tax**

The city of Virginia Beach, Virginia, collects a 10 percent tax on cellular phone bills up to a maximum of \$3 per month. Proceeds from the tax are deposited in the general fund, and a flat dollar amount is earmarked for the farmland protection program.

The General Assembly gave all Virginia localities the right to tax cellular phone usage in the mid-1990s. In other states local jurisdictions may already have the authority to tax cellular phone service. Farmland protection advocates should check with town or county counsel.

### **Check-Off Box**

In 1997, county commissioners in Kent County, Maryland, approved a voluntary check-off box program to help fund easement acquisitions. The county distributes a brochure with local tax mailings that describes the county's farmland protection efforts and asks for a small contribution.

Local governments may need to seek state authority to collect contributions for land conservation. Kent County did not need state approval, but sponsors sought support from the county commissioners.

### **Credit Cards**

In 1996, the Land for Maine's Future Program issued the first state-sponsored credit card to raise money for land protection. LFMF acquires land to provide recreational opportunities, and to protect important natural resources (including farmland) and scenic views. The program receives 0.5 percent of all charges and has received about \$60,000 to date.

Local jurisdictions do not have a large enough pool of potential card users to make this alternative worthwhile. State programs may be required to seek statutory authority to issue a credit card. LFMF sought statutory authority to issue its credit card in 1995. There was overwhelming support among legislators for this funding option.

## PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS: SOURCES OF FUNDING

*For additional information on Purchase of Agricultural Conservation Easements and other farmland protection programs, the Farmland Information Center offers publications, an on-line library and technical assistance. To order PACE: What Works, a 38-page comprehensive technical report (\$14.95), or other AFT publications, call (800) 370-4879. The farmland information library is a searchable database of literature, abstracts, statutes, maps, legislative updates and other useful resources. It can be reached at <http://www.farmlandinfo.org>. For additional assistance on specific topics, call the technical assistance service at (413) 586-4593.*

### Lottery Proceeds

In 1992, 58 percent of Colorado voters approved the Great Outdoors Colorado Amendment redirecting a portion of lottery revenues to protect open space. The amendment also created the Great Outdoors Colorado Trust Fund to oversee the distribution of the funds. Great Outdoors Colorado funds wildlife habitat restoration, land conservation (including farmland), and parkland acquisition and maintenance. GOCO received an average of \$17 million each year between 1994 and 1999.

Enabling legislation for state lotteries typically specifies how revenues can be spent. Consequently, reallocating revenues to land protection often requires legislative action. Contact state legislators for more information about this potential funding source.

### Mitigation Ordinances

The City Council of Davis, California, adopted an ordinance requiring farmland mitigation in 1995. For every acre of agricultural land converted to other uses, an acre of agricultural land must be protected by a conservation easement. Developers can grant a conservation easement or pay a fee that would cover the cost of protecting a comparable amount of land.

Mitigation ordinances are difficult to craft. The U.S. Supreme Court ruled in *Nollan v. California Coastal Commission*, 107 S. Ct. 3141, that there must be a direct connection or "nexus" between exactions from landowners and the proposed development's impact. Furthermore, in 1994 the U.S. Supreme Court determined in *Dolan v. Tigard*, 114 S. Ct. 2309, that exactions must be "roughly proportional" to the impact of the development.

### Special Districts

In California, the Solano County Farmland and Open Space Foundation is funded by a Mello-Roos district. A Mello-Roos district is a special district created under the state's Mello-Roos Community Facilities Act of 1982 to finance open space acquisition and the development of parks. In Solano County, properties within the district pay an annual tax of \$16- \$33 per acre prior to development and \$80 per unit after construction.

The rules governing the creation of special districts vary from state to state. For more information, farmland protection advocates should contact their town or county administrators.

### Benefits

- These funding options are often viewed as "new" sources of revenue and receive enthusiastic public support.
- The check-off box and credit card programs allow residents to choose to contribute to farmland protection.
- The mitigation ordinance makes developers pay for farmland protection, establishing a clear link between the cause and a potential solution.

### Drawbacks

- Localities may not be able to secure the authority to implement some of these options.
- Some of these strategies produce modest revenues or take a few years to generate significant sums.

## ISSUES TO ADDRESS

- What does state or local law allow?
- How difficult will it be to get approval?
- How much money can be raised?
- How predictable is the funding source?
- How secure is the funding source? Could funds be "raided" by state or local governments during fiscal crises?
- Who benefits and who pays?



# FACT SHEET

## INSTALLMENT

## PURCHASE

## AGREEMENTS

### DESCRIPTION

Purchase of Agricultural Conservation Easement (PACE) programs compensate property owners for restrictions on the future use of their land. One of the biggest challenges in administering PACE programs is figuring out how to pay for them. This fact sheet describes an innovative financing plan that helps jurisdictions stretch available funds while offering unique benefits to landowners.

#### What it is

An installment purchase agreement (IPA) is an innovative payment plan offered by a handful of jurisdictions with Purchase of Agricultural Conservation Easement (PACE) programs. IPAs spread out payments so that landowners receive semi-annual, tax-exempt interest over a term of years (typically 20 to 30). The principal is due at the end of the contract term. Landowners also can sell or securitize IPA contracts at any point to realize the outstanding principal. The IPA financing plan won the Government Finance Officers Association Award for Excellence in 1990.

#### How it works

The day before settlement, the jurisdiction sets the rate for the interest paid to the IPA holder. The rate is typically pegged to the current return on U.S. Treasury bonds. However, counties and local governments can set a minimum interest rate, or "floor," to provide participating farmers with additional security.

Jurisdictions can purchase zero-coupon bonds to cover the final balloon payments. "Zeroes" do not generate regular interest income. Instead, they yield a lump sum when the bond matures. Because zero coupon bonds cost a fraction of their face value, the public entity leverages available funds. "Zeroes" with a face value equal to the purchase price are usually purchased the day before settlement.

At settlement, the landowner grants the jurisdiction a permanent agricultural conservation easement in exchange for an IPA. Then the jurisdiction begins making tax-exempt interest payments twice a year. The balance of the purchase price is paid to landowners at the end of the agreement. The landowner may sell or "securitize" the IPA on the municipal bond market to recover the outstanding principal before the end of the agreement.

### HISTORY

Howard County, Maryland, pioneered IPA as a strategy to fund its PACE program in 1989. By 1987, the county's five-year-old farmland protection program had stalled. Lump-sum payments were no longer a competitive option for farmers due, in part, to dramatic increases in land prices. Later that year, county officials met with a financial advisor to explore ways to make the most of accumulated tax revenues and reinvigorate the program. The advisor combined installment payments and the purchase of zero coupon bonds with the county's traditional funding mechanisms. Working with the county executive, county agencies and bond counsel to refine the proposal, the plan was announced in May 1989. Workshops were held for interested property owners over the next few months and the County Council approved the first round of IPAs in November. To date, 81 agreements have been executed in Howard County, adding 9,200 acres to the 7,500 protected before the IPA program was created.

Based on the Howard County model, Harford County, Md., Burlington County, N.J. and Virginia Beach, Va. have developed IPA programs to stretch public funds for farmland protection. In addition, Pennsylvania's statewide farmland preservation program is crafting an IPA program. In the spring of 1999, Pennsylvania legislators earmarked \$500,000 to support this effort.

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## INSTALLMENT

## PURCHASE

## AGREEMENTS

*For more information on installment purchase agreements contact:*

*Evergreen Capital Advisors, Inc.  
34 Chambers Street  
Princeton, New Jersey  
08542-3700.*

*Tel: (609) 279-0068  
Fax: (609) 279-0065  
Email:  
patoconnell@wmswordco.com*

*For information about farmland protection techniques contact AFT's technical assistance service.*

## FUNCTIONS AND PURPOSES

IPAs are intended to make PACE programs competitive with developers by providing unique financial and tax advantages. In addition, this payment option enables jurisdictions to use accumulated and future dedicated revenues to protect land while it is still available and relatively affordable.

## ISSUES TO ADDRESS

### Authority and Approvals

In general, state and local governments can enter into IPAs if they have the authority to issue general obligation bonds. Because IPAs constitute long-term debt, agreements typically require the same approval process as bonds. Laws governing the issuance of bonds vary from state to state. Some states require approval by the legislature, the voters or both. For more information, contact state agencies that regulate municipal bond issuance, bond counsel or independent investment banking or public financial advisory firms.

### Funding

An IPA program requires dedicated funds to cover the interest and principal payments. Howard County uses proceeds from a local real estate transfer tax and the county's share of a statewide agricultural transfer tax to support its program. Virginia Beach relies on revenue from a property tax increase and a tax on cellular phone use.

## BENEFITS

- Landowners may defer capital gains taxes until they receive the principal for the purchase price. This keeps a larger proportion of the proceeds "working" or earning interest.
- The semi-annual interest paid on the outstanding balance of the purchase price is exempt from federal, state and local income taxes and can provide a supplementary income stream.
- Landowners can liquidate their IPA prior to the end of the agreement.

- IPAs can be transferred to heirs and are useful in estate planning.
- The package of financial and tax benefits offered to landowners could enable them to net more than they could through a traditional cash sale. These benefits may encourage landowners to accept less than the appraised value for their easements.
- IPAs stretch public funds. By deferring principal payments, public entities can buy more easements while land is available and relatively affordable. Also, by purchasing "zeroes" jurisdictions spend a fraction of the negotiated purchase price at closing and leverage available funds.

## DRAWBACKS

- IPAs require a dedicated funding source to cover the interest payments.
- An IPA program may take up to six months to develop.
- Bond counsel, a paying agent and a financial advisor will have to assist in each settlement. The estimated cost of each transaction including fees and charges by rating agencies ranges from \$5,000 to \$20,000. These costs can be higher—on a percentage basis—than the costs to issue bonds for a cash-purchase program.
- Because IPAs are backed by the full faith and credit of the jurisdiction, each agreement may require the same approval process as general obligation bonds.

#### 4. Putting it all Together





# FACT SHEET

## THE FARMLAND PROTECTION TOOLBOX



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### DESCRIPTION

This fact sheet provides a brief description of the tools and techniques that state and local governments are using to protect farmland and ensure the economic viability of agriculture. Some of the techniques result in programs that are enacted and administered at the state level, others are used primarily by local governments. Sometimes, municipal governments adapt and strengthen state laws to meet unique local needs. Many of the most effective farmland protection programs combine regulatory and incentive-based strategies.

### PROGRAMS THAT ARE GENERALLY ENACTED AT THE STATE LEVEL

#### Agricultural District Programs

Agricultural district programs allow farmers to form special areas where commercial agriculture is encouraged and protected. They stabilize the land base and support the business of farming by providing farmers with an attractive package of incentives. Typically, programs are authorized by state law and implemented at the local level. An exception is Calvert County, Md., which has its own independent agricultural district program.

There are a total of 18 state agricultural district laws in 16 states. Minnesota and Virginia authorize statewide and local agricultural district programs. Provisions vary widely, but most agricultural district laws are intended to be comprehensive responses to the challenges facing farmers in developing communities.

To maintain a land base for agriculture, some agricultural district laws protect farmland from annexation and eminent domain. Many laws also require that state agencies limit construction of infrastructure, such as roads and sewers, in agricultural districts. Three states offer participants eligibility for purchase of agricultural conservation easement programs, and two states include a right of first refusal in district agreements to ensure that land will continue to be available for agriculture.

Agricultural district laws help create a more secure climate for agriculture by preventing local governments from passing laws that restrict farm practices, and by providing enhanced protection from private nuisance lawsuits.

To reduce farm operating expenses, seven programs offer either automatic eligibility for differential tax assessment or property tax credits to farmers who enroll in agricultural districts.

Some states encourage local planning by limiting district authorization to jurisdictions with comprehensive or farmland protection plans; requiring the adoption of land use regulations to protect farmland; involving planning bodies in the development and approval of districts; and limiting non-farm development in and around agricultural districts.

#### Conservation Easements

Every state in the nation has a law pertaining to conservation easements. The National Conference of Commissioners on Uniform State Laws adopted the Uniform Conservation Easement Act in 1981. The Act was designed to serve as a model for state legislation to allow qualified public agencies and private conservation organizations to accept, acquire and hold less-than-fee-simple interests in land for the purposes of conservation and preservation. Since the Uniform Act was approved, 21 states have adopted conservation easement-enabling legislation based on this model and 23 states have drafted and enacted their own conservation easement-enabling laws. In Pennsylvania, conservation easements are authorized by common law. Oklahoma and Wyoming do not have separate provisions of state law authorizing the conveyance of conservation easements, but state agencies are given the power to hold title to easements in their authorizing legislation.<sup>#</sup>

<sup>#</sup> Stefan Nagel, State Conservation Easement Legislation (Washington, D.C.: National Trust for Historic Preservation, 1995).

# THE FARMLAND PROTECTION TOOLBOX

Agricultural conservation easements are designed specifically to protect farmland. Grantors retain the right to use their land for farming, ranching and other purposes that do not interfere with or reduce agricultural viability. They continue to hold title to their properties and may restrict public access, sell, give or transfer their property as they desire. Producers also remain eligible for any state or federal farm program for which they qualified before entering into the conservation agreement.

Conservation easements limit land to specific uses and thus protect it from development. These voluntary legal agreements are created between private landowners (grantors) and qualified land trusts, conservation organizations or government agencies (grantees). Grantors can receive federal tax benefits as a result of donating easements. Grantees are responsible for monitoring the land and enforcing the terms of the easements.

Easements may apply to entire parcels of land or to specific parts of a property. Most easements are permanent; term easements impose restrictions for a limited number of years. All conservation easements legally bind future landowners. Land protected by conservation easements remains on the tax rolls and is privately owned and managed. While conservation easements limit development, they do not affect other private property rights.

Agricultural conservation easements are a flexible farmland protection tool. Private land trusts and other conservation organizations educate farmers about the tax benefits of donating easements, and state and local governments have developed programs to purchase agricultural conservation easements from landowners. In addition, agricultural conservation easements can be designed to protect other natural resources, such as wetlands and wildlife habitat.

## Executive Orders

Governors of at least 10 states have issued executive orders that document the importance of

agriculture and farmland to their states' economy, environment and culture. Some executive orders direct state agencies to withhold funding from projects that would result in farmland conversion. Others have created task forces to investigate farmland conversion. State executive orders have the potential to build public and institutional support for other farmland protection programs. By restricting the use of state funds for projects that would result in the loss of agricultural land, executive orders also can influence the actions of local governments. To the extent that they call attention to the problem of farmland conversion and facilitate discussion about solutions, executive orders can serve as a building block of a comprehensive farmland protection program.

## Growth Management Laws

Growth management laws are designed to control the timing and phasing of urban growth and to determine the types of land use that will be permitted at the local and regional levels. At least 12 states have laws that control development or set planning standards for local governments, but only seven - Hawaii, Maryland, Minnesota, New Jersey, Oregon, Vermont and Washington - address the issue of farmland conversion. These seven laws vary in the controls that they impose on state and local governments and in the extent to which they protect agricultural land from development.

Growth management laws take a comprehensive approach to regulating the pattern and rate of development and set policies to ensure that most new construction is concentrated within designated urban growth areas or boundaries (UGBs). They direct local governments to identify lands with high resource value and protect them from development. Some growth management laws require that public services such as water and sewer lines, roads and schools be in place before new development is approved. Others direct local governments to make decisions in accordance with comprehensive plans that are consistent with plans for adjoining areas.

Oregon has one of the nation's strongest farmland management laws. As a result of the state's 1972 Land Conservation and Development Act, every county in Oregon has implemented agricultural protection zoning, protecting more than 16 million acres of agricultural land. Washington's Growth Management Act (GMA), passed in 1990 and strengthened in 1991, also is proving to be an effective farmland protection tool. Most of Washington's counties have developed inventories of important agricultural land, and several have implemented farmland protection techniques, such as agricultural protection zoning, purchase of agricultural conservation easement programs and transfer of development rights programs since the enactment of the GMA. Growth management laws in Hawaii, Vermont, New Jersey and Maryland have been somewhat less effective in preventing farmland conversion and promoting the development of local farmland protection programs.

#### **Purchase of Agricultural Conservation Easement Programs**

Purchase of agricultural conservation easement (PACE) programs pay property owners to protect their land from development. PACE is known by a variety of other terms, the most common being purchase of development rights. Landowners sell agricultural conservation easements to a government agency or private conservation organization. The agency or organization usually pays them the difference between the value of the land for agriculture and the value of the land for its "highest and best use," which is generally residential or commercial development. Easement value is most often determined by professional appraisals, but may also be established through the use of a numerical scoring system that evaluates the suitability for agriculture of a piece of property.

State and local governments can play a variety of roles in the creation and implementation of PACE programs. Some states have passed legislation that allows local governments to create

PACE programs. Others have enacted PACE programs that are implemented, funded and administered by state agencies. Several states work cooperatively with local governments to purchase easements. A few states have appropriated money for use by local governments and private nonprofit organizations. Finally, some local governments have created independent PACE programs in the absence of any state action.

Cooperative state-local PACE programs have some advantages over independent state or local programs. Cooperative programs allow states to set broad policies and criteria for protecting agricultural land, while county or township governments select the farms that they believe are most critical to the viability of local agricultural economies, and monitor the land once the easements are in place. Involving two levels of government generally increases the funding available for PACE. Finally, cooperative programs increase local government investment in farmland protection.

PACE programs allow farmers to cash in a fair percentage of the equity in their land, thus creating a financially competitive alternative to selling land for non-agricultural uses. Permanent easements prevent development that would effectively foreclose the possibility of farming. Removing the development potential from farmland generally reduces its future market value. This may help facilitate farm transfer to the children of farmers and make the land more affordable to beginning farmers and others who want to buy it for agricultural purposes. PACE provides landowners with liquid capital that can enhance the economic viability of individual farming operations and help perpetuate family tenure on the land. Finally, PACE gives communities a way to share the costs of protecting agricultural land with farmers.

#### **Right-to-Farm Laws**

State right-to-farm laws are intended to protect farmers and ranchers from nuisance lawsuits. Every state in the nation has at least one

# THE FARMLAND PROTECTION TOOLBOX

right-to-farm law. Some statutes protect farms and ranches from lawsuits filed by neighbors who moved in after the agricultural operation was established. Others protect farmers who use generally accepted agricultural and management practices and comply with federal and state laws. Twenty-three right-to-farm laws also prohibit local governments from enacting ordinances that would impose unreasonable restrictions on agriculture.

Right-to-farm laws are a state policy assertion that commercial agriculture is an important activity. The statutes also help support the economic viability of farming by discouraging neighbors from filing lawsuits against agricultural operations. Beyond these protections, it is unclear whether right-to-farm laws help maintain the land base.

## Tax Relief

### *Circuit Breaker Tax Relief Credits*

Circuit breaker tax programs offer tax credits to offset farmers' property tax bills. Four states have circuit breaker programs. In Michigan, Wisconsin and New York, farmers may receive state income tax credits based on the amount of their real property tax bill and their income.

In Iowa, farmers receive school tax credits from their local governments when school taxes exceed a statutory limit. The counties and municipalities are then reimbursed from a state fund. In Michigan, landowners that wish to receive circuit breaker credits must sign 10-year restrictive agreements with their local governments to prevent farmland conversion. In Wisconsin, counties and towns must adopt plans and enact agricultural protection zoning to ensure that tax credits are targeted to productive agricultural land. The Wisconsin program has facilitated the adoption of agricultural protection zoning in more than 400 local jurisdictions.

Like differential assessment laws, circuit breaker tax relief credits reduce the amount farmers are

required to pay in taxes. The key differences between the programs are that most circuit breaker programs are based on farmer income and are funded by state governments.

### *Differential Assessment Laws*

Differential assessment laws direct local governments to assess agricultural land at its value for agriculture, instead of its full fair market value, which is generally higher. Differential assessment laws are enacted by states and implemented at the local level. With a few exceptions, the cost of the programs is borne at the local level.

Every state except Michigan has a differential assessment law. Differential assessment is also known as current use assessment, current use valuation, farm use valuation, use assessment and use value assessment.

Differential assessment programs help ensure the economic viability of agriculture. Since high taxes reduce profits, and lack of profitability a major motivation for farmers to sell land for development, differential assessment laws also protect the land base. Finally, these laws help correct inequities in the property tax system. Owners of farmland demand fewer local public services than residential landowners, but they pay a disproportionately high share of local property taxes. Differential assessment helps bring farmers' property taxes in line with what it actually costs local governments to provide services to the land.

## PROGRAMS THAT ARE ENACTED AT THE LOCAL LEVEL

### *Agricultural Protection Zoning*

Zoning is a form of local government land use control. Zoning ordinances segment counties, cities, townships and towns into areas devoted to specific land uses and establish standards and densities for development.

Agricultural protection zoning (APZ) ordinances designate areas where farming is the

every land use and discourage other land uses in those areas. APZ limits the activities that are permitted in agricultural zones. The most restrictive regulations prohibit any uses that might be incompatible with commercial farming.

APZ ordinances also restrict the density of residential development in agricultural zones. Maximum densities range from one house per 20 acres in the eastern United States to one house per 640 acres in the West. Some local ordinances also contain right-to-farm provisions and authorize commercial agricultural activities, such as farmstands, that enhance farm profitability. Occasionally, farmers in an agricultural zone are required to prepare farm management plans.

In most states, APZ is implemented at the county level, although towns and townships may also have APZ ordinances. Zoning can be modified through the local political process. Usually, the enactment of an APZ ordinance results in a reduction of permitted residential densities in the new zone. This reduction in density, also called downzoning, is generally controversial because it can reduce the market value of land. A change in zoning that increases permitted residential densities is known as upzoning. A change in the zoning designation of an area—from agricultural to commercial, for example—is known as rezoning. Successful petitions for upzoning and rezoning in agricultural protection zones often result in farmland conversion.

APZ stabilizes the agricultural land base by keeping large tracts of land relatively free of non-farm development. This can reduce the likelihood of conflicts between farmers and their non-farming neighbors. Communities can use APZ to conserve a “critical mass” of agricultural land, enough to keep individual farms from becoming isolated islands in a sea of residential neighborhoods. Maintaining a critical mass of agricultural land can ensure that there will be enough farms to support local

agricultural service businesses. By restricting the development potential of large properties, APZ limits land speculation and helps keep land affordable to farmers and ranchers. Finally, APZ helps promote orderly growth by preventing sprawl into rural areas, and benefits farmers and non-farmers alike by protecting scenic landscapes and maintaining open space.

### Cluster Zoning

Cluster zoning ordinances allow or require houses to be grouped close together on small lots to protect open land. The portion of the parcel that is not developed may be restricted by a conservation easement. Cluster developments are also known as cluster subdivisions, open space or open land subdivisions.

Cluster subdivisions can keep land available for agricultural use, but generally they are not designed to support commercial agriculture. The protected land is typically owned by developers or homeowners’ associations. Homeowners may object to renting their property to farmers and ranchers because of the noise, dust and odors associated with commercial agricultural production. Even if the owners are willing to let the land be used for agriculture, undeveloped portions of cluster subdivisions may not be large enough for farmers to operate efficiently, and access can also be a problem. For these reasons, cluster zoning has been used more successfully to preserve open space or to create transitional areas between farms and residential areas than to protect farmland.

### Comprehensive Planning

Comprehensive planning allows counties, cities, towns and townships to create a vision for their joint future. Comprehensive plans, which are also known as master or general plans, outline local government policies, objectives and decision guidelines, and serve as blueprints for development. They typically identify areas targeted for a variety of different land uses, including agriculture, forestry, residential, commercial, industrial



# THE FARMLAND PROTECTION TOOLBOX

and recreational activities. Comprehensive plans provide a rationale for zoning and promote the orderly development of public services.

A comprehensive plan can form the foundation of a local farmland protection strategy by identifying areas to be protected for agricultural use and areas where growth will be encouraged. It may include policies designed to conserve natural resources and provide affordable housing and adequate public services. Some counties have used the comprehensive planning process to encourage their cities and towns to develop urban growth boundaries and adopt agricultural protection zoning. Others have incorporated the use of PACE and transfer of development rights into their master plans.

## Mitigation Ordinances and Policies

Mitigation ordinances are a new farmland protection technique. In 1995, city officials in Davis, Calif., enacted an ordinance that requires developers to permanently protect one acre of farmland for every acre of agricultural land they convert to other uses. Developers can place an agricultural conservation easement on farmland in another part of the city or pay a fee to satisfy mitigation. While most of the regulatory farmland protection techniques restrict the property rights of farmers, the Davis mitigation ordinance makes developers pay for farmland protection.

In 2000, Yolo County, Calif., where the City of Davis is located, adopted an agricultural land mitigation program that is modeled on the 1995 City of Davis ordinance.

In Massachusetts, Executive Order 193 seeks to lessen the extent to which state activities contribute to the conversion of agricultural land. The Massachusetts Department of Food and Agriculture, based on its interpretation of EO 193, seeks mitigation for projects involving state funds. It has negotiated the removal of top soil from development sites for use by local farmers and funds for agricultural land protection.

King County, Wash. has a “no net loss of farmland” policy in its comprehensive plan. The policy prohibits removal of land from the agricultural production district (APD) unless an equal amount of agricultural land of the same or better quality, adjacent to the APD, is added.

## Right-To-Farm Ordinances

Local governments around the nation are enacting their own right-to-farm laws to strengthen and clarify weak language in state laws. Local right-to-farm laws are most widespread in California, where the state farm bureau developed and distributed a model right-to-farm ordinance during the 1980s.

A local right-to-farm ordinance can serve as a formal policy statement that agriculture is a valuable part of the county or town economy and culture. Some require that a notice be placed on the deed to all properties in agricultural areas, cautioning potential buyers that they may experience noise, dust, odors and other inconveniences due to farming and ranching operations. Local ordinances help educate residents about the needs of commercial agriculture and reassure farmers that their communities support them.

## Transfer of Development Rights

Transfer of development rights (TDR) programs allow landowners to transfer the right to develop one parcel of land to a different parcel of land. Generally, TDR programs are established by local zoning ordinances. In the context of farmland protection, TDR is used to shift development from agricultural areas to designated growth zones closer to municipal services. The parcel of land where the rights originate is called the “sending” parcel. When the rights are transferred from a sending parcel, the land is restricted with a permanent conservation easement. The parcel of land to which the rights transferred is called the “receiving” parcel. Buying these rights generally allows the owner

*For additional information on farmland protection, the Farmland Information Center offers publications, an on-line library and technical assistance. To order AFT publications, call (800) 370-4879. The farmland information library is a searchable database of literature, abstracts, statutes, maps, legislative updates and other useful resources. It can be reached at [www.farmlandinfo.org](http://www.farmlandinfo.org). For additional assistance on specific topics, call the technical assistance service at (413) 586-4593.*



held at a higher density than ordinarily permitted by the base zoning. TDR is known as transfer of development credits (TDC) in California and in some regions of New Jersey.

TDR is used by counties, cities, towns and townships. Two regional TDR programs for farmland protection were developed to protect New Jersey's Pinelands and the pine barrens of Long Island, N.Y. TDR programs are distinct from PACE programs because they involve the private market. Most TDR transactions are between private landowners and developers. Local governments approve transactions and monitor easements. A few jurisdictions have created "TDR banks" that buy development rights with public funds and sell them to developers and other private landowners.

Some states, such as New Jersey, have enacted special legislation authorizing local governments to create TDR programs. Other states consistently refused to give local governments such authorization. Counties and towns have created TDR programs without specific state authorizing legislation; municipal governments must work with their attorneys to determine whether other provisions of state law allow them to use TDR.

TDR programs can be designed to accomplish multiple goals including farmland protection, conservation of environmentally sensitive areas and the preservation of historic landmarks. They prevent non-agricultural development of farmland, reduce the market value of protected farms and provide farmland owners with liquid capital that can be used to enhance farm viability.

TDR programs also offer a potential solution to the political and legal problems that many communities face when they try to restrict development of farmland. Landowners often oppose agricultural protection zoning (APZ) and other use regulations because they can reduce equity. APZ can benefit farmers by preventing urbanization, but it may also reduce the fair

market value of their land. When downzoning is combined with a TDR program, however, landowners can retain their equity by selling development rights.

While dozens of local jurisdictions around the country allow the use of TDR, only a few of them have used the technique successfully to protect farmland. TDR programs are complex and must be carefully designed to achieve their goal. Communities that have been most successful in using TDR are characterized by steady growth, with the political will to maintain and implement strong zoning ordinances and planning departments that have the time, knowledge and resources to administer complex land use regulations.

### OTHER STRATEGIES TO PROTECT FARMLAND AND SUPPORT AGRICULTURE

Most farmers say the best way to protect farmland is to keep farming profitable. State and local governments have created a variety of initiatives to support the economics of agriculture.

For example, the Massachusetts Farm Viability Enhancement program was created in 1994 to improve farm income and environmental stewardship. The program has two phases. In Phase I, participating farmers work with a team of consultants to evaluate the current operation and develop a plan. Plans may call for product diversification, direct marketing, value-added products and/or agri-tourism. They also may recommend conservation practices. In Phase II, funding is available to implement the plan. Farmers may apply for grants of \$20,000 or \$40,000 in exchange for five or ten year term easements.

The Massachusetts program has served as a model for initiatives in Connecticut, New Jersey and New York.

## FARMLAND PROTECTION ACTIVITIES BY STATE

State	Agricultural Districts	Agricultural Protection Zoning	Circuit Breaker	Differential Assessment	PACE	Right-to-Farm*	TDR
Alabama				▲		▲	
Alaska				▲		▲	
Arizona				▲	▲	▲	
Arkansas				▲		▲	
California	▲	❖		▲	▲❖	▲	❖
Colorado		❖		▲	▲❖	▲	❖
Connecticut				▲	▲	▲	❖
Delaware	▲			▲	▲	▲	
Florida		❖		▲	▲	▲	❖
Georgia				▲		▲	
Hawaii		▲		▲		▲	
Idaho		❖		▲		▲	❖
Illinois	▲	❖		▲	❖	▲	
Indiana		❖		▲		▲	
Iowa	▲	❖	▲	▲		▲	
Kansas		❖		▲		▲	
Kentucky	▲	❖		▲	▲❖	▲	
Louisiana				▲		▲	
Maine				▲	▲	▲	❖
Maryland	▲❖	❖		▲	▲❖	▲	❖
Massachusetts	▲			▲	▲	▲	❖
Michigan		❖	▲		▲❖	▲	
Minnesota	▲❖	❖		▲		▲	❖
Mississippi				▲		▲	
Missouri				▲		▲	
Montana		❖		▲	▲❖	▲	❖
Nebraska		❖		▲		▲	
Nevada				▲		▲	
New Hampshire				▲	▲❖	▲	
New Jersey	▲			▲	▲❖	▲	❖
New Mexico				▲		▲	
New York	▲		▲	▲	▲❖	▲	❖
North Carolina	▲			▲	▲❖	▲	
North Dakota		❖		▲		▲	
Ohio	▲	❖		▲	▲	▲	
Oklahoma				▲		▲	
Oregon		❖		▲		▲	
Pennsylvania	▲	❖		▲	▲❖	▲	❖
Rhode Island				▲	▲	▲	
South Carolina				▲		▲	
South Dakota		❖		▲		▲	
Tennessee	▲			▲		▲	
Texas				▲		▲	
Utah	▲	❖		▲	▲	▲	❖
Vermont				▲	▲	▲	❖
Virginia	▲❖	❖		▲	▲❖	▲	❖
Washington		❖		▲	▲❖	▲	❖
West Virginia				▲	▲	▲	
Wisconsin		❖	▲	▲	❖	▲	
Wyoming		❖		▲		▲	
TOTAL	16	25	4	49	26	50	17

▲ State program

❖ Local program

\*A number of local jurisdictions also have enacted right-to-farm ordinances. We do not have a complete inventory.



## THE FIVE “I”S:

### HOW COMMUNITIES HAVE ACHIEVED SUCCESSFUL STRATEGIES

Around the country, people are developing effective solutions to stop or slow the conversion of working farm and ranch lands to non-agricultural use. Successful efforts reveal a consistent pattern and a process of creating community-based solutions to local problems. While by no means a definitive list or a standard set of procedures, after 20 years of farmland protection activities, common elements have emerged. The following Five “I”s describe the typical process involved in designing successful strategies to address the loss of agricultural land:

- ☐ Identification;
- ☐ Inventory;
- ☐ Investigation;
- ☐ Integration; and
- ☐ Implementation.

A silent “I” in this process is Involvement, which is necessary every step of the way. Involving a wide range of stakeholders will facilitate approval of new legislation and public funding, ensure continued political support for farmland protection and a secure future for agriculture.

#### IDENTIFICATION

The first step a community usually takes is to identify local issues associated with growth and development, and their effect on agriculture and the loss of farm and/or ranch land. People need to understand the issues and how they affect their lives. For serious and substantive action to take place, it is important to raise public awareness of the impacts of growth on agriculture and why people should care about the loss of agricultural land.

While the challenges may be similar, the nature and scope of the problems facing agriculture are specific to each region, county or municipality. In very rural areas, for example, the pace of non-farm development may be relatively slow, but the inappropriate placement of even a few new houses adjacent to active farms and ranches endangers their viability. In faster growing communities, the tremendous rate of growth is the biggest challenge to stabilizing the land base. Low commodity prices and structural changes in the agriculture are at least as big a problem as the loss of land. And not surprisingly, low profits create an incentive for producers to sell out – which often results in non-farm development. But even in areas where agriculture is highly profitable, conflicts between commercial operators and their neighbors still can threaten operations. In western states, the competition for water between agricultural producers and homeowners is an increasingly difficult issue to resolve.

Outreach and involvement are critical parts of the identification process. While farmers and ranchers first may recognize the threat to agriculture and its resource base, people who work in support industries, local officials and realtors, planning commissions, concerned citizens and other people who might be effected must get involved in finding community-based solutions. It is very rare for one group to have the power to create a solution alone. A local government may fail, for example, if producers are not involved in designing the land use laws, legislation or proposed farmland protection program – especially if they

refuse to support it! In some cases, producers and other community members may agree that open land in agriculture should be protected from development but disagree about whether it should be maintained in commercial production or saved as open space.

The most effective farmland protection strategies typically result from three things: broad recognition of the problems, stakeholder consensus as to the extent and nature of the problems that need to be addressed, and agreement to do something to solve the problems. Typically, constituencies reach beyond the agricultural and land conservation communities. People who have a vested interest in growth and development, such as builders, realtors, bankers and business people also are important to involve. Affordable housing advocates should be engaged in program development since strategies are likely to affect the location and availability of land for residential development. Stakeholders who are excluded from the process of identifying the problem are likely to oppose solutions that are proposed in the future.

Identification of the problem can take many forms, from conversations between neighbors to formal discussion groups or surveys. These forums can generate excitement, enthusiasm and a sense of community spirit for the work ahead.

## INVENTORY

Conducting studies, or inventories, of community resources and physical infrastructure will help to place the issues and problems in focus. These include local agricultural, natural and human resources. The inventory process often starts with mapping agricultural land and soil resources, and can include other agricultural, natural and human resources, as well. Communities need detailed information on the types of local operations, their profitability, the level of investment in agriculture, secondary and support businesses, even the average age of operators. This information can help people define a critical mass of land necessary to support a future for agriculture and determine what types of policies and programs can help stabilize the land base and support economic viability.

The future of agriculture and its land depends upon its people. Nationally, the average age of farmers and ranchers is older – and getting older faster – than the general population. Few young people are entering into agriculture. It is important to find out if this is true locally because if producers are aging and few young farmers and ranchers are willing or able to take their place, what are now viable operations will likely be sold for non-agricultural purposes. In addition, information on land tenure can be helpful, as rented land often is more vulnerable to conversion than land managed by owner-operators. Finally, the availability of skilled laborers – even if they are part time or seasonal – also is vital to long-term agricultural viability.

Assessing the location, quantity and quality of natural resources is another important step in the inventory process. Most agricultural operations need a reliable source of water to remain viable. Competition for water can be as big a threat to farms as competition for land. This is particularly true in areas where crops depend on irrigation.

Agricultural land often encompasses rich natural, ecological and scenic resources. Mapping lakes, rivers, and streams, wetlands, wildlife habitat, unique ecosystems and scenic vistas can help communities develop strategies that protect both farmland and natural resources.

Finally, the presence of non-agricultural development and physical infrastructure such as roads, sewers and water lines can have a critical impact on the fate of agricultural land.

Many communities have found the Land Evaluation and Site Assessment system to be a useful tool in the inventory process. LESA is a numerical rating system for farmland that measures both soil quality and site factors that make land more or less suitable for agriculture. Site factors can include everything from the size of a parcel and surrounding land uses to the existence of agricultural support services and public investment in water and sewer systems and public transportation. Some jurisdictions have used LESA to

determine where agriculture is likely to be viable in the future. Others use LESA scores to delineate agricultural protection zones or determine whether specific parcels of land should be included in an agricultural district.

Maps are one of the most useful products created in the inventory process. If a geographic information system is available, maps can be automatically layered to show the locations where areas with fertile soils, active farms, adequate water supplies, important ecological resources and few public services overlap. These areas can then be targeted for protection. A series of maps may display current zoning, parcel size, urbanization, new subdivisions, land value and improvements, and enrollment in current farmland protection programs. These types of map can serve as a visual representation of the need for action, and can help explain farmland protection strategies to policymakers and the public.

## INVESTIGATION

Investigation is the process of looking for solutions to the problems identified by the community. Investigation and inventory often occur simultaneously, as the inventory process informs the search for solutions. Conversely, the range of possible solutions to be investigated may dictate the type and extent of inventory work to be done.

A task force, working group or local planning department generally takes the lead on investigation. These groups focus the excitement and concern generated by agreement on the set of problems to be addressed and the need for solutions. Task forces can serve as forums to refine the issues, set goals and resolve remaining disagreements between stakeholders.

Generally, the first job of the task force is to determine its scope. Often, this includes setting targets for the amount of land to protect and the extent of growth and development to permit. It also can include building support to implement farmland protection techniques, securing any necessary funding and identifying agencies and organizations to administer policies and programs.

An effective task force will represent a wide range of interests. It is likely to involve farmers and ranchers, conservationists, local leaders and residents – both newcomers to the community as well as long-time natives.

The investigation process can include:

- ☐ Calling people from jurisdictions with successful farmland protection programs to find out what worked and what didn't work in their area;
- ☐ Inviting experts to address the task force and public meetings;
- ☐ Taking field trips to locations with successful farmland protection programs;
- ☐ Conducting surveys of local residents to assess their support for different techniques;
- ☐ Contacting the local Natural Resources Conservation Services (NRCS), Cooperative Extension or Soil and Water Conservation Service office;
- ☐ Contacting the Farmland Information Center at ([www.farmlandinfo.org](http://www.farmlandinfo.org)) or 800-370-4879.

Every community faces unique challenges. Coming up with a set of solutions sometimes seems like an overwhelming task. Fortunately, there are plenty of places to go for help. It is useful to find out about the experiences of established state and local farmland protection programs. Talking to local and state government agency officials who have managed farmland protection programs may be especially helpful. Farmers who have protected their own land are a good source of information on the benefits and

drawbacks of different strategies. Exploring, researching and analyzing the literature on farmland protection also can help communities narrow and focus their options.

## INTEGRATION

The next step after inventory and investigation is to set goals and develop a strategy to protect strategic resources and support the future of agriculture. Goals and strategies should be based on the nature and scope of the problems identified in previous community efforts. They should be targeted to protect the most important agricultural lands and resources. And they should both respond to the concerns of stakeholders and reflect the lessons learned by other communities. While the final strategy may resemble other community-based initiatives, it should be the result of a unique, locally driven process.

The experience of communities who have made the effort and implemented successful farmland protection strategies shows it takes an integrated and ongoing effort to protect farmland and support a viable agricultural economy. There is no magic bullet; no single tool or program will get the job done effectively. To ensure the long-term health of agricultural industries and the land base that supports them takes a mixture of tax incentives, land use laws and farmland protection tools, integrated with conservation and stewardship programs along with economic development initiatives. Combining these in a way that supports long-term community goals will help ensure that land use programs, voluntary or otherwise, not only will protect strategic agricultural resources but will support farmers and ranchers and the business of agriculture.

## IMPLEMENTATION

Implementation is the culmination and test of the whole process of creating a successful strategy to protect farm and ranch land and ensure the future of local agriculture. The best task force or working group report is of little value if their proposals are not put into place! Implementation includes the approval, funding and administration of policies and programs to protect agricultural land. Some policies and programs are enacted by a county board, while others may require the state legislature or a public vote.

Policies and programs rely on public support. So it is essential to build support among key constituencies, including farmers, ranchers and other residents and politicians. The more these people have been involved in the process of creating policies and programs, the more likely they will be to support their implementation. Typically, building public support involves mailings, meetings and media campaigns. Documents that were created during the first four steps of the process, such as maps and reports, can be useful in the effort to promote the program to key constituencies.

Members of the community's advisory committee or task force often become the strongest advocates. They can explain and promote proposals to their peers and other stakeholders and help win support for their approval. If the task force represents a good mix of stakeholder groups right from the start, when the time comes to generate popular support with local voters, traditional opponents can be united to present a common message to the public.

Implementation is an ongoing process that includes administration, ongoing evaluation, program modification and reauthorization. The most successful farmland protection programs responded to changing conditions by improving and expanding over time.



SAVING  
AMERICAN  
FARMLAND:  
WHAT WORKS



*American Farmland Trust*

## ABOUT AMERICAN FARMLAND TRUST

American Farmland Trust is the only private, nonprofit conservation organization dedicated to protecting the nation's strategic agricultural resources. Founded in 1980, AFT works to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment. Its activities include public education, technical assistance, policy research and development and direct land protection projects. Basic AFT membership is \$20 a year.

AFT provides a variety of professional services to state and local governments and public agencies, private organizations, land trusts and individual landowners. Services include customized information products and workshops on farmland protection and estate planning; policy research, development and evaluation; farmland protection program implementation and conservation real estate consulting.

For membership information or general information about AFT, contact the National Office or connect to our home page at <http://www.farmland.org>. To order this book or to find out more about AFT's publications, products and services call (800) 370-4879.

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## ABOUT THE FARMLAND INFORMATION CENTER

In cooperation with the U.S. Department of Agriculture's Natural Resources Conservation Service and the National Agricultural Library, AFT has developed a farmland information center specifically on farmland protection. The FIC has two components that serve the public: an electronic library and a technical assistance service. The library offers a searchable database of farmland protection literature, state statutes, maps, resources and other reference aids. The FIC can be accessed at <http://www.farmlandinfo.org> or by calling (413) 586-4593 for technical assistance.

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# SAVING AMERICAN FARMLAND: WHAT WORKS

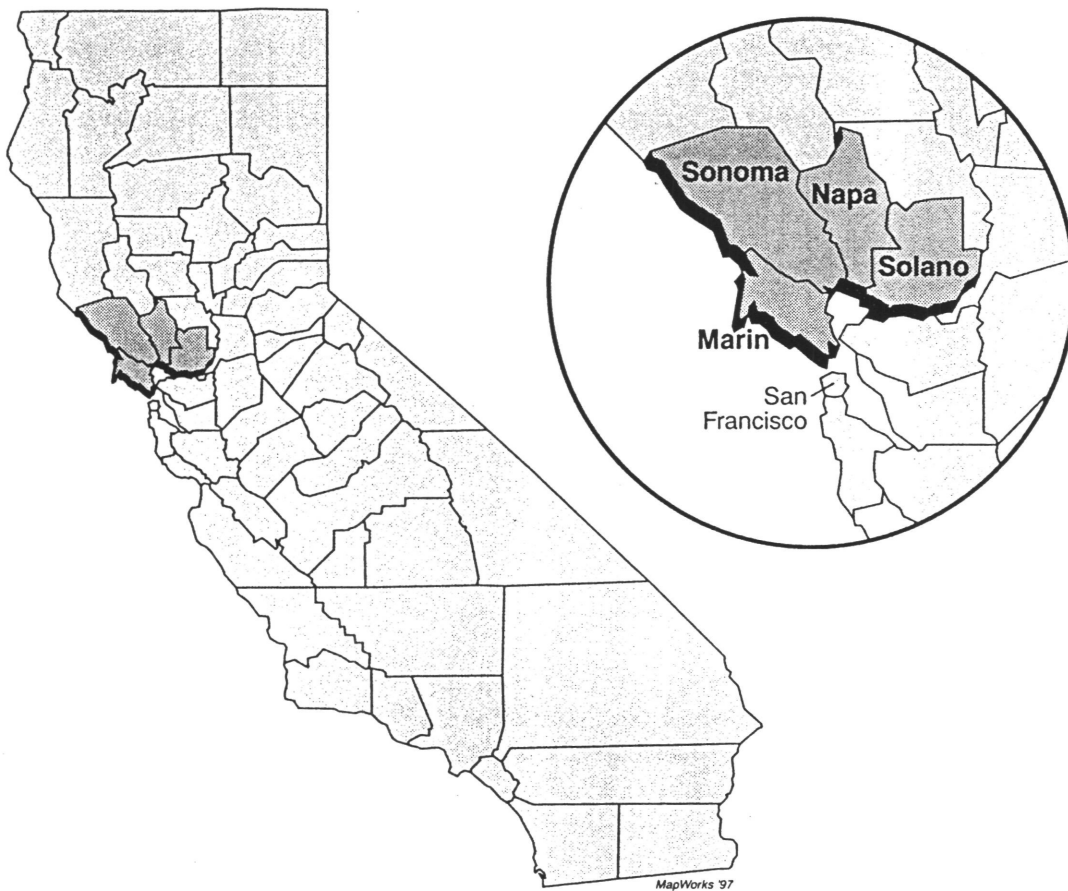
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# SECTION TWO: PUTTING IT ALL TOGETHER

## CHAPTER 8: CALIFORNIA CASE STUDY

MAP 8.1: CALIFORNIA CASE STUDY COUNTIES



California's mediterranean climate and thousands of acres of unique and nutrient-rich soils create ideal growing conditions for more than 250 different crops and livestock, including some that are not produced commercially anywhere else in the country. As a result, California's agricultural industry plays a critical role in the state, national and world economies. It employs more than 500,000 people directly and boosts the gross state product. In 1995, the state's agricultural industry showed cash sales receipts of \$22 billion. Agriculture-related industries, such as processing and packaging, generate about \$70 billion for California's economy each year<sup>1</sup>, and employ approximately 260,000 people<sup>2</sup>.

STATE AND COUNTY  
FARMLAND PROTECTION  
PROGRAMS IN  
CALIFORNIA

Since 1947, California has been the nation's number-one ranking agricultural state. It produces 55 percent of the fruits, vegetables and nuts and 25 percent of all table food consumed in the country. Nearly 10 percent of all U.S. farm exports come from California.

The temperate climate that is so conducive to agriculture also makes California one of the most attractive places to live in the United States. Between 1940 and 1990, the state's population more than quadrupled, growing from seven million to 30 million. This number is expected to double within the next 50 years, making California one of the most populated and fastest growing states in the nation<sup>3</sup>.

The result is a tug of war over much of the state's 23 million acres of agricultural land, 18 percent of which is classified as prime. On one end of the rope are people, mostly farmers, fighting to retain the land for agricultural use. On the other end are people who want to use agricultural land to build houses and businesses for the streams of newcomers to the state. Three of California's most productive farming regions—the Central Valley, Imperial Valley and Coastal Valleys—are among the 20 areas in the nation most threatened by development pressure<sup>4</sup>.

## STATE FARMLAND PROTECTION PROGRAMS

### Tax Incentives: The Williamson Act

Recognizing these development pressures, California has implemented a variety of incentive-based programs, regulations and funding measures to protect the state's agricultural industry and its land base. In 1965, the state legislature approved the California Land Conservation Act. The legislation, commonly known as the Williamson Act, created a program that offers tax relief to landowners who agree to sign 10-year contracts restricting the use of their land to agricultural or open space uses. Landowners who sign contracts are taxed preferentially, based on the agricultural value of their land. The state then reimburses counties with Williamson Act acreage for approximately one-third of the total property taxes lost. The program was created in response to high, speculation-driven land taxes spurred by California's rapid population growth after World War II.

The amount of acreage enrolled in the Williamson Act program peaked at 16.2 million in 1980-81 and has fluctuated between 15 million and 15.8 million since then. As of 1995, half of the state's agricultural land was enrolled in the program and more than 70 percent of the state's estimated acreage of prime farmland was under contract.



Proposition 13 offers tax relief to farmland owners, although it was not specifically targeted to the farming community. Prop 13, approved by the state's voters in 1978, limits ad valorem property taxes to 1 percent of the assessed property value.

#### State funding for land protection

In addition to tax relief, the state has taken several other steps to protect agricultural land. In 1984, the legislature approved the California Park and Recreational Facilities Act, which earmarked \$50 million for the California State Coastal Conservancy's Agricultural Land Preservation Program. The conservancy was created by the legislature in 1976 to enhance, protect and restore the resources of the state's coastal zone, particularly the agricultural resources. The \$50 million was used by the conservancy, as well as by local public agencies and nonprofit organizations, primarily to acquire conservation easements or land.

Another substantial source of funding came in 1988, when state voters approved a \$776 million general bond initiative called the California Wildlife, Coastal and Parkland Initiative. Commonly referred to as Proposition 70, the initiative provides funding for protecting parkland, wildlife and agricultural land; \$53 million was earmarked for the protection of agricultural land. Farmland protection funding was divided among seven counties. The California Coastal Conservancy received \$15 million, which it used to buy easements on or title to 7,000 acres of agricultural land in the state's coastal counties.

#### The Mello-Roos Community Facilities Act

The Mello-Roos Community Facilities Act of 1982 enables local governments to create community facilities districts to finance the creation and protection of parks, parkways and open space. Because farmland has been included in the legal definition of open space, revenues also may be raised for farmland protection. The districts are funded by tax revenues paid by people living within the districts. The legislation provides local governments with great flexibility in how to apportion and assess special taxes, although it prohibits taxes based on the assessed value of real property. It is usually based on the density of development, square footage of construction or flat acreage charges. The districts may issue revenue bonds based on the guaranteed income from these assessments<sup>5</sup>.

#### Controlling urbanization through Local Agency Formation Commissions

In 1963, California enacted legislation allowing for the formation of Local Agency Formation Commissions (LAFCOs) in each of the state's counties except San Francisco. The legislation came in response to the post-World War II development boom, which resulted in exorbitant costs associated with expanding infrastructure and the rapid conversion of agricultural land to nonagricultural use. Each LAFCO is made up of two city council members, two members of the county Board of Supervisors and a member of the public selected by the other members. A county employee (usually the planning director) acts as the executive officer.

The goal of LAFCOs is to contain growth to areas in and around cities. In 1985, the Cortese/Knox Local Government Reorganization Act reiterated the state's intent for LAFCOs to have as one of their primary functions the protection of California's farmland and open space resources. To accomplish this goal, LAFCOs are given the authority to approve or deny

city requests to incorporate and annex land. They may also establish and modify "sphere of influence" boundaries, which are the lines around cities that represent the point beyond which urban development may not occur. Because LAFCOs develop their own policies, their effectiveness varies. The Marin County LAFCO has the most stringent policies regarding the annexation of agricultural land of any LAFCO in the state. Solano County's policies are more vague, and its LAFCO has been relatively lax in rejecting proposals to annex prime agricultural land or expand spheres of influence into agricultural areas.

### Urban growth boundaries

The effectiveness of LAFCOs also is limited by the fact that their decisions are temporary. Policies and sphere of influence boundaries can be changed by one vote of the LAFCO. The nonprofit Greenbelt Alliance is thus promoting another approach to controlling urban sprawl. Since the organization opened its first North Bay office in 1995, it has urged city councils to adopt 20-year urban growth boundaries and ratify them at the ballot box.

A UGB is a line drawn on a city's land use map that represents the point beyond which urban development is prohibited. Usually, land within the line is reserved for housing, businesses and city parks, while land outside the boundary is designated for agriculture, recreation and natural resource protection. By separating agricultural land from developable land, UGBs can lower the price of agricultural land. They are functionally similar to LAFCO spheres of influence, but they have a 20-year lifetime and can be changed only by popular vote. In 1996, four cities in Sonoma County voted to create UGBs.

### LOCAL FARMLAND PROTECTION PROGRAMS: THE NORTH BAY REGION

While UGBs, LAFCOs, the Mello-Roos Act, state PACE funding and the Williamson Act are helpful in protecting the state's agricultural land in general, they are most effective when used in conjunction with initiatives implemented at the local level. Napa and Marin counties, located just north of San Francisco, were two of the first counties in the state to use agricultural protection zoning to prevent farmland conversion. Local officials and citizens in the North Bay region, which includes Sonoma and Solano counties as well as Napa and Marin, have developed some of the nation's most innovative farmland protection programs.

Local initiatives used in the North Bay counties include APZ, caps on development, voter approval for zoning amendments, tax sharing, using sales tax revenues to purchase agricultural conservation easements, and marketing programs. The initiatives vary from county to county because, despite their similar development pressures and proximity to one another, each jurisdiction acts independently.

One exception is a joint effort to protect the coastal dairy industries in Marin and Sonoma counties. As the Agricultural Element of Marin's general plan states, "Any discussion of agriculture in Marin County is incomplete without a recognition of its relationship to agriculture in Sonoma County." A joint approach is necessary because most of the agricultural support services that used to exist in Marin have relocated to Sonoma, where the agricultural industry as a whole is stronger. California Gold Dairy Products, the major point of delivery for local milk, is located in the Sonoma County city of Petaluma. The region's only slaughterhouse also is located in Petaluma and many Marin County dairies import hay and grain from Sonoma.

## INTRODUCTION

### FARMLAND PROTECTION IN MARIN COUNTY

Marin County's famed rainy and foggy weather provides ideal conditions for grazing. Miles of open rangeland, combined with easy access to food markets in neighboring San Francisco, made Marin northern California's leading dairy county for much of the 20th century.

The industry began losing ground in the 1960s. The number of dairies decreased from 150 to fewer than 100, as the result of several factors. For one, federal and state water projects were implemented in the state's Central Valley, eventually making it more attractive than Marin for dairy farming. At the same time, the county began feeling significant development pressures from San Francisco, which was beginning to outgrow itself.

Marin agriculture took its biggest hit in the 1970s, when the federal government purchased 90,000 acres of shoreline property in West Marin, much of which was used for dairy farming. The land was converted to two federal parks: Point Reyes National Seashore and Golden Gate National Recreation Area.

The impact of the change in land use was not felt until after the parks opened in 1972. The parks were supposed to attract visitors and had long been promoted by county conservationists as an alternative to development. But nobody had prepared for the onslaught of people who would want to stay in Marin for a day or even a lifetime. West Marin, which had been a virtual secret to all but the dairy farmers who dominated the area, became a hot spot for San Francisco residents looking for a permanent or temporary respite from the city. Homes and businesses were built on the outskirts of the park to cater to the needs of visitors and newcomers. One proposed development would have led to 41,000 homes being built on 51,000 acres. It was rejected by the Board of Supervisors. The demand for property in Marin County increased so rapidly that the price for one acre of land near the park climbed from \$100 to \$700 per acre just after the park opened.

At this point, the viability of the county's dairies was in question. Not only were dairy farms closing, but the support services for the agricultural industry began to relocate to other counties. This decline created concern throughout the county. For farmers in West Marin, the loss of farms and agricultural land represented a threat to their livelihood. Non-farmers in the relatively cramped quarters of East Marin were concerned that the failure of dairy farms would result in loss of open space. Both sides wanted to ensure the future of agriculture in their county, but with no incentives or techniques in place to do so, uncertainty prevailed.

## TECHNIQUES AND STRATEGIES

### Comprehensive planning

In 1973, when the loss of farmland had become a crisis in this conservation-oriented county, the Board of Supervisors adopted the Marin Countywide Plan. The plan's Agriculture Element is designed to "...enhance, promote and protect agricultural land uses and the agricultural industry in Marin County." It does so, in part, by dividing the county into three corridors: The City-Centered Corridor on the eastern side of the county, the Inland Rural Corridor in the middle of the county and the Coastal Recreation Corridor along the western side. Agricultural uses take high priority in the Inland Rural and Coastal Recreation corridors.

## Agricultural protection zoning

The Marin County zoning ordinance was amended in 1973 to implement the new plan, and has been modified several times since then. It establishes seven agricultural zoning districts. Densities for properties in each district are assigned on the county's zoning map. On 90 percent of the land within these districts, the maximum density and/or minimum lot size is one house per 60 acres. Prior to 1973, the minimum lot size in most of the county was one acre. The agricultural zoning districts are:

TABLE 8.1: AGRICULTURAL ZONING DISTRICTS, MARIN COUNTY

District	Minimum lot size range	Maximum density range
A (Agriculture)	30-60 acres*	
A2 (Limited Agricultural)	6,000 square feet to 2 acres	
R-A (Suburban Agricultural)	6,000 square feet to 1 acre	
ARP (Agricultural Residential Planned)		1 residential unit per 2 to 60 acres
C-R-A (Coastal, Residential Agricultural)	6,000 square feet to 1 acre	
C-ARP (Coastal Agricultural Residential Planned)		1 residential unit per 2 to 60 acres
C-APZ (Coastal, Agricultural Production Zone)		1 residential unit per 60 acres

The most stringent agricultural zoning is in the C-APZ and C-ARP districts, which combine new requirements with restrictions that also apply to other districts. Master plans are required for principal permitted uses in the A, ARP, C-APZ and C-ARP districts, and clustering is mandatory. Permanent conservation easements must be established over the non-developed portion of the property. Agricultural management plans are required in the ARP, C-APZ and C-ARP districts. There are stringent design and development standards for the C-APZ and C-ARP districts. Transfer of development rights is allowed in the ARP and C-APZ zones, but the technique has not been used widely.

\*In this district, as in all the districts, properties are assigned densities on the zoning map. Therefore, a range of densities may exist.

Most farmers were opposed to the zoning when it was first implemented. They believed their property rights were taken when the federal government used eminent domain to acquire farmland for the coastal parks. While farmers were allowed to lease their old pasture back from the government and continue grazing cattle in the parks, they no longer controlled the land. Erosion regulations and grazing restrictions accompanied the leases. Farmers responded to the new zoning as "another government invasion." In addition, many resisted zoning as a weak solution to the challenge of improving the economic viability of agriculture. They argued that zoning might protect agricultural land, but that it would not protect the agricultural industry. Non-farmers, obviously including the county politicians who approved the zoning, were more convinced that zoning would be an effective tool to protect agriculture.

The effectiveness of agricultural zoning, particularly 60-acre zoning, quickly became an issue of debate in Marin and still remains under discussion. Some residents, particularly county officials, believe Marin County's zoning and land use regulations have sent the majority of interested home-buyers elsewhere. As Marin has become known as a county with high land values and stringent development guidelines, people have located in other counties, particularly Sonoma. On the other hand, most farmers, and some non-farmers, believe that the zoning has not done what it was set out to do. Not all developers have been scared off by the high price of land in Marin. As San Francisco has become a wealthier city, more people have been willing to spend money on a home in the country. This is true even though inflation and demand have increased housing costs in Marin. As a result, 60-acre ranchettes have sprung up throughout much of western Marin, particularly in the town of Nicasio. Ranchettes generate several significant problems. First, they increase the price of neighboring farmland. The value of one acre of farmland in west Marin is approximately \$400 to \$1,000, but increases to \$3,500 if the land is developed<sup>7</sup>. Second, ranchettes create the potential for right-to-farm conflicts between farmers and their non-farming neighbors. Finally, by fragmenting what once were large blocks of agricultural land, they can endanger the area's agricultural industry.

Despite these opposing views, there was a general consensus that the new zoning required farmers to make a financial sacrifice because it limited the development potential of their land. People on both sides of the debate recognized that the county needed to do more to improve farm profitability. They also agreed that farmers should have a non-mandatory option for protecting their land. Finally, there was a general recognition that zoning could not ensure the permanence of agriculture, because it could be changed by one vote of the county Board of Supervisors.

#### Purchase of agricultural conservation easements: Marin Agricultural Land Trust (MALT)

Marin found a solution to these problems in 1980, when the private nonprofit Marin Agricultural Land Trust (MALT) was formed to purchase conservation easements on the county's agricultural land<sup>8</sup>. At the time, there were 431 land trusts in the country, but MALT was the first to focus specifically on the preservation of agricultural land<sup>9</sup>. MALT represented the "carrot" that went with the zoning "stick." It provided the permanence that zoning lacked and presented an alternative to development that farmers and ranchers could choose if they were faced with having to sell their land.

Even though the county farm bureau backed the creation of MALT, many farmers were wary of PACE at first. Critics did not like the permanence associated with conservation easements (all of MALT's easements are in perpetuity). They also questioned whether offers for easements would be fair. It took MALT three years to acquire its first easement, but this was not seen as a model because it involved a farmer in dire financial trouble. Over the next few years, several easements were donated by wealthy landowners, including a 2,538-acre easement on film producer George Lucas' Skywalker Ranch. These, too, were not inspiring because they did not reflect the economic situation facing commercial farmers.

The first convincing arrangement was a 978-acre easement acquired in 1991. The landowner sold the easement so he would have enough money to buy his neighbor's farm, which already had a conservation easement on it. Eleven easements were sold in 1992, representing the most transactions for MALT in one year.

MALT currently holds 38 easements on 25,504 acres of land. The average easement is 670 acres. Purchase prices have ranged from \$275 to \$1,500 per acre and currently average \$980 per acre. Easement prices range from 25 to 50 percent of the unrestricted market value of the property. Farmers generally consider these prices fair.

MALT's success is due in part to its funding sources. In 1984, the land trust received \$1 million from the California Coastal Conservancy. This allotment was matched by the Leonard and Beryl Buck Trust, a charitable foundation specifically restricted to Marin projects. Also, in 1988, Marin County was allocated \$20 million in Proposition 70 funds, \$15 million of which was directed to MALT. Marin received the second largest allocation of Proposition 70 funds in the state.

The land trust's success is also due to general agreement between the county's farming and non-farming communities about the use of agricultural land. This consensus began evolving before MALT was created. Two county residents—a farmer and a conservationist—proposed the formation of the land trust. Several years later, the farming and conservation sectors worked together to get 25,000 signatures on a petition for Proposition 70 funds and to raise \$15,000 for MALT. Both of these moves showed unified community support for MALT and are, therefore, considered to be largely responsible for the decision to allocate \$15 million to the land trust<sup>10</sup>.

The economy also played a role in MALT's success. During the early 1990s, when most of the conservation easements were acquired, agriculture in the county was in a slump. The dairy industry in particular was suffering because of the federal buyout that had occurred in the late 1980s. It also was affected by several droughts and freezes. Between 1990 and 1991, the county's agricultural production value dropped 7 percent, or \$3 million<sup>11</sup>.

MALT suffered a setback in 1992 when voters defeated a ballot initiative that would have generated new funding for PACE. Critics of the initiative said the county should not be spending money on protecting agricultural land when affordable housing needs were not being met. A 1996 ballot measure for PACE funding also failed.



Now MALT is at a crossroads. Only \$600,000 remains in Proposition 70 funds, all of which must be used for acquisition, not operating expenses. The land trust receives approximately \$100,000 from the Marin Community Foundation (formerly the Buck Trust), \$200,000 in other donations and \$25,000 from the county annually for its operating expenses. However, this is not considered enough to acquire the easements that are on MALT's waiting list or to even come close to protecting the remaining 100,000 acres of unprotected land in the county. To increase support for PACE, some MALT members have proposed an organization modeled on the Vermont Housing and Conservation Board, which serves the dual purposes of protecting agricultural land and developing affordable housing.

#### LAFCO policies

Marin County also is protecting agricultural land by concentrating growth within the boundaries of its 11 cities. This responsibility lies primarily with the Marin LAFCO, which has established several policies designed to prevent the urbanization of agricultural land. Among them are:

- The agency has authority to reject the annexation of productive agricultural land that is identified as agricultural by zoning classification, Williamson Act contract or general plan designation.
- LAFCO considers vacant or non-prime agricultural land within a city or a city's sphere of influence before any approving any proposal that would allow for or lead to the development of existing agricultural land outside the city's limits or sphere of influence.
- LAFCO tries to keep urban development in the cities. To achieve this objective, cities are directed to annex only the unincorporated lands located within their LAFCO-adopted municipal urban service area or sphere of influence boundary.

The strength of the Marin LAFCO is based on several factors. Compared to the other North Bay counties, Marin's cities are not anxious to annex land. This attitude goes hand in hand with the desire to protect agricultural land and open space. Also, there is no farmland in east Marin; mountains separate the eastern and western parts of the county.

#### IS IT WORKING?

The success of Marin's efforts can be measured in several ways. For one, only 642 acres of agricultural land were converted for urban use between 1984 and 1994. Of this total, 62 percent of the land was categorized by the state as important farmland. Also, in the North Bay, Marin has the most land (48.7 percent of the land) categorized as secured greenbelt and the second least amount of land (2.2 percent of the land) at high risk of being developed<sup>13</sup>.

Non-statistical measures of success are perhaps better indicators of whether the county's agriculture has a viable future. Among the most important is that the county's residents—including its farmers, conservationists and politicians—are generally supportive of the need to protect agricultural land and recognize that doing so requires supporting the agricultural industry as well. Agriculture-related businesses have stayed in the county.

The end result is that farmers, developers and other residents generally believe that the future of agriculture in Marin County is reasonably secure.

## INTRODUCTION

Since the 1950s, Napa County residents have voted in favor of programs and techniques designed to protect agriculture, specifically the vineyards that wind through the Napa Valley. Warm sunshine and moderate cooling create an ideal climate for growing wine grapes. The Valley's vineyards have earned a reputation for producing some of the best wine grapes in the world.

## FARMLAND PROTECTION IN NAPA COUNTY

County residents are supportive of the wine industry because the vineyards demand little space compared to other forms of agriculture, yet play a major role in boosting the county's economy. Less than 7 percent of the county's land (31,500 acres) is planted in grapes but vineyards are responsible for 95 percent of the total agricultural production value. In 1995, grapes had a gross production value of \$144 million. When other industries that benefit from the wineries, such as retail and tourism, are factored in, the total economic value of the wine grape industry is close to \$1 billion<sup>14</sup>. The economic value to the individual landowner is also significant. The annual return on one acre of vineyard is \$10,000. An acre of vineyard can sell for as much as \$50,000<sup>15</sup>.

*Photo: Napa  
Valley's vineyards  
have earned a  
reputation for  
producing some of  
the best wine  
grapes in the  
world.*



Jill Schwartz

These factors make it easier for Napa County landowners to resist the pressure to develop their land. Being so close to San Francisco, the temptation is strong. But between 1984 and 1994, only 2,609 acres—mostly agricultural land—were converted for urban use. Many landowners also are supportive of regulations, such as APZ, that limit development.

The result is that despite several lawsuits and initial criticism, Napa County has taken the lead in farmland protection in the North Bay. As early as 1953, the county adopted a master plan that recognized the need for growth management, particularly in the rural agricultural areas. At the time, there was little recognition in California of the need for cooperative planning at a countywide level. The plan resulted in the adoption of zoning and subdivision ordinances for the county and its cities. In 1995, the county received a National Historic Planning Landmark Award from the American Institute of Certified Planners for its 1953 plan and other early farmland protection efforts.

Napa continues to make agriculture a high priority and today has a reputation for having some of the most stringent farmland protection regulations in the North Bay. These include APZ and two initiatives designed to slow growth.

## TECHNIQUES AND STRATEGIES

### Agricultural protection zoning

In 1968, the Napa County Board of Supervisors voted 5-0 to amend the zoning ordinance to include an AP (Agricultural Preserve) District, a 29,000-acre area of Napa Valley where agriculture is the predominant use. The district is confined to the valley's floor. Napa was the first county to create an agricultural preserve under the state's Williamson Act.

Although it was supported by a group of vintners, the agricultural preserve was controversial within the farming community. At the heart of the controversy was the county government's desire to enforce a 40-acre minimum lot size within the preserve. Prior to 1968, the minimum lot size was one acre. Supporters of the zoning included farmers who thought urban areas were expanding too rapidly in the Napa Valley and were beginning to infringe upon agriculture. The opposition was led by farmers who said the zoning could devalue their property and force them out of farming<sup>16</sup>. The county compromised by establishing a 20-acre minimum lot size. Opponents filed a lawsuit challenging the new zoning, but a judge ruled in favor of the county.

As the wine industry became profitable, opposition to large minimum lot sizes decreased. In 1973, the county zoning ordinance was amended to increase the minimum lot size in the agricultural preserve to 40 acres. In 1975, it was amended again to create another agricultural zone, called the AW (Agricultural Watershed) District. These two agricultural zones combined cover 90 percent of the county's total land base.

The AW zone dominates Napa Valley's hillsides. The minimum lot size in the zone originally ranged from 40 to 160 acres, depending on the physical constraints of the land. Lot size was increased to 160 acres across the entire zone in 1994. This change was supported by the Napa County Farm Bureau, which viewed it as a means of discouraging the creation of ranchettes that are not agriculturally viable. A higher minimum lot size has not been implemented along the valley floor because this area was already substantially divided into small parcels.

Certificates of compliance are a challenge for zoning. These certificates allow old "paper" subdivisions, many of which date back to the 1800s, to be legalized regardless of the

area's zoning. The result has been the creation of numerous five-acre parcels in the Agricultural Preserve. When residential units are built on these parcels, the value of surrounding agricultural land increases.

### Ballot measures that limit growth

#### *Measure A*

In 1980, Napa County voters approved Measure A, which sets a limit on the number of new residential units that can be constructed in the unincorporated area of the county. Measure A required the Board of Supervisors to amend the General Plan to include a Growth Management System Element, which includes these two standards:

- Limit the number of new housing units allowed in the unincorporated area of the county to enough housing to accommodate an annual population growth rate of 1 percent or the annual population growth rate of the nine Bay Area counties, whichever is less. This translates to approximately 134 residential units annually. This limit applies through the year 2000.
- Set aside at least 15 percent of the annual allowable number of housing permits for housing that will be purchased or rented by persons with average or below-average income.

Measure A was challenged in court by a group of developers, but the plaintiffs gave up their fight after losses in Superior Court and Appellate Court.

#### *Measure J*

In 1990, county residents voted 2-1 in favor of Measure J. The initiative, which was the first of its kind in California, took land use authority away from the county's supervisors to prevent them from approving unnecessary or premature conversion of agricultural and other important resource lands. It states that all elements of the General Plan designed to protect agricultural, watershed and open space lands will remain in place until 2020 unless a change is approved by popular vote. The Board of Supervisors cannot rezone these lands unless the action is necessary to prevent an unconstitutional taking of property, or unless they make six specific findings:

1. Annexation to or otherwise including the land within a city is not likely;
2. The land is immediately adjacent to areas developed in a manner comparable to the proposed use;
3. Adequate public services and facilities are available and have the capability to accommodate the proposed use by virtue of the property being within or annexed to appropriate service districts;
4. The proposed use is compatible with agricultural uses, does not interfere with accepted agricultural practices and does not adversely affect the stability of land use patterns in the area;

5. The land proposed for redesignation has not been used for agricultural purposes in the past two years and is unusable for agriculture due to its topography, drainage, flooding, adverse soil conditions or other reasons; and

6. The land proposed for redesignation does not exceed 40 acres for any one landowner in any calendar year, and one landowner may not obtain redesignation in the general plan of "Agriculture, Watershed and Open Space" or "Agricultural Resource" land more often than every other year. Landowners with any unity of interest are considered one landowner for purposes of this limitation.

Measure J was challenged by a group of developers and farmers who claimed it went beyond voters' authority to pass local initiatives. They maintained the measure conflicted with state law and the county general plan by preventing the county from meeting local and regional housing needs, and failed to meet a state requirement to identify all the changes needed to make the county general plan consistent. Finally, the challengers argued that Measure J imposed illegal limits on property rights by placing such strong restrictions on development that it would be impossible to build on 90 percent of the county's land. In *DeVita v. County of Napa*, the plaintiffs lost in Napa County Superior Court and the District Court of Appeals. The California Supreme Court reviewed the case in March 1995 and affirmed the county's right to initiate amendments to the land use element of a general plan.

#### Donation of easements

The Napa County Land Trust was established in 1976 and is funded primarily by donations from members. It holds easements on 7,845 acres of agricultural land.

#### Tax sharing

Commercial and industrial growth in the unincorporated area is controlled in part through a tax-sharing agreement between the county and all of its cities except American Canyon. The agreement requires each of the cities to give the county five cents of every sales tax dollar generated within their boundaries. This policy increases county revenues and helps farmland protection advocates reject the argument that development is needed to increase the county tax base.

#### Agricultural marketing

In 1990, voters approved a winery ordinance that was designed to support the county's agricultural sector. The ordinance requires that at least 75 percent of the grapes used to make wine and other products at the county's wineries be grown within Napa County. Prior to the ordinance, a large number of wineries were growing grapes in other areas where land is cheaper, then using the grapes to produce wine in Napa so the prestigious Napa label could be put on the bottle.

Opinions were divided about how the ordinance would affect Napa's wineries and agricultural land. Advocates argued that it would increase the demand for vineyard land, which would result in stronger support for farmland protection efforts. Others maintained that additional land would not be needed because improved technology would increase yields, or

because vineyards would simply relocate to other counties. Critics charged that the ordinance would hurt the county's wineries by increasing production costs.

Observers report that in the seven years since it was approved, the ordinance has protected the agricultural viability of Napa's wine-grape industry. Land use consultant and Napa County Planning Commissioner Mary Handel believes that the ordinance has allowed Napa grape growers to continue making a profit from grapes and wine, and at the same time reduced the trend of farmland being converted for tourist facilities that have little to do with the county's agriculture<sup>17</sup>.

#### IS IT WORKING?

Which came first, the wineries or farmland protection? Some county residents say the wineries would never have earned a reputation worldwide if the county had not made farmland protection a high priority. Others say farmland protection would not have been a high priority had the wineries not been successful.

Either way, the county's residents and business people recognize the need to maintain Napa's agricultural industry. Their support of the policies and regulations described above indicates that they understand the need to protect farmland for agriculture, not just for open space. This understanding will help ensure the future of agriculture in the Napa Valley.

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#### INTRODUCTION

\* Sonoma County's most effective farmland protection programs and policies were not implemented until 1989. As a result, today the county faces several challenges to protecting its agricultural land base. The first is development pressure. Sandwiched between Napa and Marin, which have been relatively progressive in protecting agricultural land, Sonoma is believed to receive much of the development that is steered away from its neighbors by high land prices and strict land use regulations. Sonoma is also much larger than the other North Bay counties—more than twice the size of Napa and three times that of Marin. The large size of the county makes land cheaper in Sonoma than in Napa or Marin. Finally, Sonoma, unlike Marin and Napa, has a major highway running its length. Highway 101 links the North Coast and San Francisco, and bedroom communities have sprung up along both sides of the freeway.

The results of this pressure are evident in the county's population figures. Sonoma's population increased by at least 30,000 every five years between 1980 and 1995, when it reached 400,000. It is expected to climb another 35,000 by 2000, according to county officials. Population estimates vary depending on the source, but the rate of growth is not disputed.

The diversity of agriculture in Sonoma creates another challenge. While Marin is almost exclusively a dairy county and Napa is almost exclusively a wine grape county, Sonoma has a little of both, and more. Poultry and poultry products, apples, nursery stock, sheep and prunes are the largest products in Sonoma, in terms of dollar value, following wine grapes and market milk. Sonoma also has more specialty crops and a larger organic farming community than its neighboring counties. Some county officials and residents contend that this diversity

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works against efforts to protect land and the agricultural industry because each niche can become too focused on its own needs, forgetting about the larger picture. Others believe that the diversity is an asset because it broadens the base of support for agriculture, especially in the non-farm community. It also increases the amount of land available for agricultural use because different crops require different types of terrain, such as hilly, flat or grazing land.

Historically, the most significant challenge for Sonoma has been the lack of cooperation between the farming and non-farming communities. This was most evident in 1984, when open space advocates and other non-farmers led an effort to create a farmland protection program. Measure C, the Farmland Initiative, called for the creation of an agricultural policy council to establish boundaries for agricultural production zones and the implementation of TDR, PACE and/or agricultural districts.

Measure C incorporated most of the recommendations of a Sonoma County Farm Bureau study that suggested the county consider PACE. Still, the farm bureau campaigned against the initiative. Many farmers feared that the programs and regulations being proposed would place too many restraints on the development of land. They were particularly concerned that APZ would cause them severe financial hardship. Measure C failed 2-3 at the polls. A 1988 property rights initiative backed by some farmers was also defeated.

Although the ballot initiatives were unsuccessful, many Sonoma County residents say the standoff at the polls was the impetus for protecting the county's agricultural land base and supporting its agricultural industry. One outcome of the failed measures was the understanding that the farming and non-farming communities must work together and make compromises before change can occur.

Sonoma County got off to a late start, but its efforts are noteworthy. They include the creation of a program for acquiring conservation easements, new zoning designations for agricultural areas and the establishment of a marketing program.

#### TECHNIQUES AND STRATEGIES

##### **Purchase of agricultural conservation easements: Sonoma County Agricultural Preservation and Open Space District**

The Sonoma County Agricultural Preservation and Open Space District was created in November 1990, following a 70-percent vote of approval from the county's residents. The purpose of the district is to acquire outright or purchase easements on approximately 600,000 acres of agricultural, natural resource and open space land, which represents 60 percent of the county's land base. Several California counties, including Marin, have created special districts for acquiring open space. Sonoma was the first to establish a special district the purpose of which includes acquiring agricultural land.

The district is funded by a 20-year, one-quarter-percent sales tax approved by 55 percent of the voters during the same election in which the measure establishing the district was approved. The tax increased the total sales tax within the county to 7.5 percent, and has generated \$8 million to \$11 million per year since it was imposed. Ninety-five percent of this

funding is used for acquisitions, and the remaining 5 percent is for operating expenses. The district has spent approximately \$30 million to date.

Sonoma is the only jurisdiction in the country that uses revenues from a broad-based sales tax to purchase conservation easements on agricultural land. Widespread support for this kind of funding measure is usually hard to find. But in Sonoma, there was little doubt from the outset that the county's voters would support the idea. The funding proposal came along at the right time—two years after Proposition 70 was approved. Seventy percent of Sonoma's voters backed the state proposition. Many were believed to be new residents who had moved from larger cities in the Bay Area to escape urbanization. With the mood set for protecting open space, county supervisors appointed a board to study a citizens' group's proposal for a district. The most likely opponents, including business leaders and farmers, were appointed to the board with the hope that they would resolve their differences early on. They did, and many believe that is why the county's voters backed the measures to create the district and the tax. Since most tourists visit Sonoma County to enjoy its natural beauty, the sales tax measure is a pay-as-you-go way for visitors to support open space protection. During the same year the tax was approved, county voters turned down a half-cent sales tax to widen Highway 101.

The five-member Sonoma County Board of Supervisors serves as the district's Board of Directors and makes all final decisions on land and easement purchases. A 17-member Citizens' Advisory Committee appointed by the board advises the board and staff on policy matters and makes acquisition recommendations. A six-member Open Space Authority reviews and approves the district's budget.

To decide which land to include in its program, the board held six public hearings shortly after the district was created. Input from the hearings was used to create an Acquisition Plan in 1992. The Acquisition Plan groups land into three categories:

- Category One: Most of the land in this category is within the county's community separators along Highway 101. Community separators are one- to two-mile strips of land between the county's major cities.
- Category Two: The second-priority category encompasses 250,000 acres of hillside and grazing land. Most of the protected land is located on the edge of cities.
- Category Three: Land in this category is not considered to be under immediate threat, and is thus listed in the district's Acquisition Plan as the lowest priority. The district cooperates with other agencies to acquire land or easements when important resources are threatened, or when parcels of land become available through gifts or bargain sales.

The district acquires interests in land throughout the county to remedy serious threats to agriculture, open space or natural resources. It provides a 50-percent match to cities' purchases of easements on open space and recreational land. A \$1 million fund has been set aside for such acquisitions.

The per-acre value of easements within each category ranges from \$10,000 in Category One to \$200 in Category Three, and the average price is \$1,500. Higher prices were

paid when the district was first created, to compensate landowners whose land had decreased in development value when stricter agricultural zoning was implemented.

### Sonoma Land Trust

The Sonoma Land Trust was founded in 1975, and was the sole organization in the county that acquired agricultural easements prior to the formation of the Agricultural Preservation and Open Space District. The nonprofit conservation group owns title to 2,076 acres and holds easements on 9,110 acres. Most of this land is wildlife habitat that is not farmed. Private donations support many of the purchases. Grants from the California Coastal Conservancy (including a \$1 million grant in 1984) and membership dues from the state Fish and Game Department also are used for acquisitions. The number of transactions has decreased since the county district was formed. The land trust charges a fee of 10 percent of the easement value to monitor the land it acquires, which makes the county acquisition program more attractive.

### Comprehensive planning

Conservationists clearly stated the need to support Sonoma's farmland protection efforts throughout the 1980s. In 1984, they diligently campaigned for the Farmland Initiative (Measure C), and became even more vocal after it was defeated. Their efforts paid off in 1989, when the County Board of Supervisors amended the Sonoma County General Plan to include an Agricultural Resources Element.

The Agricultural Resources Element was proposed by a county-appointed committee of five farmers following 18 months of meetings and public hearings. It established zoning and marketing policies designed to ensure the stability and productivity of the county's agricultural lands and industries. Similar policies were spelled out in 1989 amendments to the Open Space and Land Use elements of the General Plan. The Agricultural Resources Element also established policies on farm employee housing, such as a more efficient construction permitting process. The American Planning Association gave the county an award in 1994 for its farm employee housing policies.

The Agricultural Resources Element represented a new approach to protecting farmland in Sonoma County. Prior to 1989, the General Plan emphasized that land use controls should support agriculture, but it did not contain language or requirements to implement this goal. Different elements of the plan seemed to be in direct conflict with each other. For example, one observer noted that "...while the policies on agriculture reflect[ed] an intent to avoid subdividing large tracts, policies on housing specifically state[d] that rural residential areas should be encouraged as a way of creating a diversified housing base<sup>18</sup>." The 1989 General Plan, in contrast, showed strong support for protecting agricultural land and took an economic, rather than an environmental or land use approach, to supporting agriculture. It included language from the Farmland Initiative and received support from the Farm Bureau. This agriculture-friendly approach is evidence of improved communication between the farming and non-farming communities.

### Agricultural protection zoning

Sonoma County's zoning ordinance includes regulations designed to carry out the goals of the 1989 General Plan. Specifically, the ordinance seeks to maintain parcels in agricultural areas predominantly in sizes that farmers would be willing to lease.

The ordinance establishes three agricultural zoning districts, which differ primarily in the types and intensities of agricultural support services and residential densities. Clustering is allowed in each district. If development is clustered, a conservation easement must be placed on the undeveloped area of the parcel and conveyed to the county or another nonprofit organization, according to the ordinance. The districts are:

- LIA (Land Intensive Agricultural) District: This area includes highly productive agricultural land, mainly vineyards. The minimum lot size is 20 acres and the density range is 20 to 100 acres per residential unit. (Density in each agricultural district is assigned on the county's zoning map). Only small-scale agricultural support services are allowed.
- LEA (Land Extensive Agricultural) District: This area is mainly grazing land where soil and climate conditions result in relatively low production per acre. The minimum lot size is 1.5 acres and the density range is 60 to 320 acres per residential unit. The minimum lot size is 1.5 to 10 acres if the units are clustered. Small- and large-scale agricultural support services are allowed.
- DA (Diverse Agricultural) District: This area includes land where farming may not be the principal occupation of the farmer. The minimum lot size is 10 acres and the density range is 10 to 60 acres per residential unit. Small-scale agricultural support services are allowed.

### Agricultural marketing

As a companion piece to agricultural zoning, the Board of Supervisors created a marketing program for the county's agricultural industry in 1989. One objective of the program is to help offset any potential or perceived loss in the value of agricultural land that results from agricultural zoning. Another objective is to meet one of the goals of the 1989 General Plan, which is to financially support the marketing and promotion of agricultural products grown and/or processed in Sonoma, as well as agriculture as a major county industry. The intent of each objective is to increase farmers' revenues so they will stay in agriculture instead of converting their land for non-agricultural use.

The county contributed \$25,000 to the startup of the nonprofit program known as Select Sonoma County. Half of the program's \$100,000 annual budget is funded by revenues from the county's Transient Occupancy Tax (bed tax) and half is funded by grants, special events and dues from its 350-person membership base. Funding is used to advertise the county's products, educate consumers and sponsor special promotional events. Select Sonoma County has its own logo and a monthly newsletter.

Independent of Select Sonoma County, wineries in each of the county's four valleys established a marketing group that receives county bed tax revenues. Marketing and

promotion of the wine industry have helped make Sonoma County's vineyards famous throughout the world.

#### LAFCO policies and urban growth boundaries

Growth of Sonoma's nine cities is a significant issue for the county. Between 1990 and 1995, the cities grew 12 percent, twice the rate of growth in the unincorporated area. The largest increases in population during that period were 46 percent in Windsor and 28 percent in Cloverdale.

The Sonoma LAFCO has taken a stronger stance on development within community separators during the 1990s. LAFCO policies established in 1992 forbid community separators from being annexed or included in spheres of influence. On the other hand, LAFCO policies for agricultural land are still relatively weak; the LAFCO follows state policy, which is broad and thus open to interpretation<sup>19</sup>.

The 1989 General Plan directed the county to encourage the LAFCO to make one of the following findings before approving annexations or changing spheres of influence: (1) The proposed development would not be at the expense of agriculture, or (2) the community's need for the development in the proposed location is paramount. Also, the plan requires the county to seek advice from the agricultural community for any consideration by LAFCO of requests to change spheres of influence or urban service boundaries next to or near agricultural lands.

The Greenbelt Alliance is promoting urban growth boundaries as a more effective alternative to LAFCO. In November 1996, voters in the cities of Santa Rosa, Healdsburg, Sebastopol and Rohnert Park approved UGBs.

#### IS IT WORKING?

Because of its late start and the weaknesses of some of its emerging farmland protection programs, as well as significant population growth, Sonoma County lost the largest amount of agricultural land in the North Bay between 1984 and 1994. During this period, 7,568 acres of agricultural land were converted for urban use, 91 percent of which was classified by the state as important farmland<sup>20</sup>.

The amount of Sonoma's land at risk of urban and residential development decreased 11 percent between 1991 and 1994, but Sonoma still has more land at risk than any other county in the nine-county Bay Area. Almost 12.5 percent (or 126,100 acres) of the county's total land base is threatened. Most of this land surrounds the cities in the northern part of the county. In the North Bay, Sonoma also has the smallest share of its open lands—7.6 percent—in the secure greenbelt category<sup>21</sup>.

Despite these figures, Sonoma is making progress. The Sonoma County Agricultural Preservation and Open Space District offers landowners a timely and financially competitive conservation alternative to selling land for development. Most important, community support for protecting the county's irreplaceable agricultural land is now widespread and continues to grow.

## INTRODUCTION

Solano County resembles neighboring Sonoma more than Marin or Napa. An interstate highway traverses the county, and development pressures are high. Home prices are low and development restrictions weak compared to those in neighboring counties. Solano's population grew 45 percent during the 1980s and is expected to increase an additional 66 percent by the year 2020, which would be the greatest increase in the Bay Area.

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Solano also is similar to Sonoma in that its agricultural industry is highly diverse. With a total agricultural value of \$37 million, tomatoes are the most important crop, but sugar beets, cattle and calves, nursery stock, alfalfa hay, wheat, lambs, corn and walnuts are significant million-dollar products. The county ranks second in the state in the production of corn, sheep and lambs; third in wheat; fourth in pears, sugar beets and tomatoes; and fifth in barley. As in Sonoma County, this diversity can be an asset or a hindrance to efforts to protect farmland.

A commitment to agriculture, however, is evolving more slowly in Solano than in Sonoma. This is partly due to geography and resources. Water is not as available in Solano as in the other North Bay Counties. Demographics also hinder efforts to protect farmland. The rapid expansion of Solano's cities has resulted in very high annexation rates. Approximately 13,000 acres of land were annexed during the 1980s<sup>22</sup>. This is a critical impediment to protecting farmland and the agricultural industry.

Objections to the county's annexation policy began to emerge in the 1970s, after the Board of Supervisors agreed to allow Anheuser-Busch to build a brewery on prime agricultural land less than two miles outside the city of Fairfield. The brewery set the stage for industrial development of the area. Criticism peaked in 1983, when developers proposed two amendments to the General Plan. The first proposal was to rezone 2,400 acres for Rancho Solano, a 1,200-unit residential community near Fairfield. The second was to rezone 886 acres for Manzanita, a mixed-use development two miles from Vacaville. Critics charged that the proposed developments were contrary to the General Plan policy of urban-centered growth.

## Proposition A

In response to the proposed rezonings, a group of conservationists and a few farmers founded the Orderly Growth Committee. The group sponsored a 1984 ballot initiative that was designed to change the process governing land use decisions for the unincorporated part of the county. Proposition A gave voters the power to approve or deny rezonings from the General Plan's open space and agricultural land use designations. The Board of Supervisors could approve proposed changes only to comply with state law requirements regarding the provision of low-income housing, or if supervisors could make any of six findings outlined in the measure. Findings included:

- The land to be redesignated is not prime agricultural land;
- The land is immediately adjacent to existing comparably developed areas serviced by infrastructure; or
- The use and density proposed would not interfere with accepted farming practices.



Proposition A was narrowly approved by 300 votes. Opponents were concerned that it would slow the pace of development so drastically that the county would suffer from loss of property tax and sales tax revenues, and that individual landowners would lose the development potential of their land. But support for the measure has increased since it was passed. In 1995, the Board of Supervisors voted to reapprove the initiative through 2010. Solano County Farm Bureau President Albert Medvitz backed the Supervisors' decision. His analysis of Proposition A stated that the initiative "... has not damaged and may have helped local government fiscal circumstances by keeping new development in urban housing, commerce and industry within existing urban infrastructure and service areas<sup>23</sup>."

Medvitz's opinion was consistent with conclusions reached by the California Employment Development Department and the Association of Bay Area Governments. These agencies found that during the first nine years of the initiative, Solano's cities annexed 15,143 acres of land. The majority of the annexed land was used for grazing, not crop production. The agencies noted that

[d]espite the size of these annexations, the rate of expansion of Solano city areas is only 25 percent in comparison to a 42-percent increase in population over the same time span. Assuming land conversions would take place because of rapid population growth, by allowing annexations, Proposition A has assured that conversions from rural to urban purposes remain localized around existing municipalities. Large agricultural areas not adjacent to urban areas remain undisturbed by inappropriate urban intrusions<sup>24</sup>.

#### The Rancho Solano lawsuit and the Solano County Farmland and Open Space Foundation

Shortly after Measure A was approved in 1984, the Fairfield City Council voted to annex the 2,400 acres of land needed for the development of Rancho Solano. The developers had proposed the annexation after their rezoning request to the county was rejected. The Orderly Growth Committee sued the city over the annexation. The committee stated that the environmental impact report for the development did not contain enough mitigations and that the whole project was unnecessary because considerable land within the city was available for development.

The committee accepted a settlement agreement that included a provision requiring Fairfield to create and fund a private, nonprofit organization the goal of which is to preserve the key agricultural land and open space buffers between Fairfield and its neighboring cities. The city created the Solano County Farmland and Open Space Foundation in 1986. It contributed \$100,000 for start-up costs and lent the foundation \$75,000 for administrative expenses during its first two years. Other than having the power to veto acquisitions (which it has never done), the city's authority and involvement with the foundation ends there.

The foundation is funded through a Mello-Roos District. Properties that are taxed are those within Rancho Solano. This is a unique use of a Mello-Roos District, because these districts typically generate revenues to support projects and programs that will benefit the people paying the tax. The Rancho Solano district uses tax revenues to support conservation efforts outside the city.

Ironically, the survival of the foundation is largely dependent on development within Rancho Solano. Each property within Rancho Solano pays an annual tax of \$16 to \$33 per acre prior to development and \$80 per unit after construction. With approximately 800 units developed, the Mello-Roos district generates approximately \$64,000 annually. Annual revenues were expected to be about \$96,000, but development within Rancho Solano has been slower than expected.

The foundation uses money from the district to repay loans it takes out to acquire land or conservation easements. The district also is supported by fundraising and grants. To date, the foundation has purchased more than 2,000 acres of grazing land and 147 acres of cropland. It has paid between \$700 and \$4,000 per acre. The foundation also holds a 50-acre conservation easement donated by the city. The amount of land protected is relatively small because the demand for land is so high, and Solano County farmers are generally unwilling to sell easements. The approach the foundation feels it must use, therefore, is to buy land in fee simple, then sell it with a conservation easement attached.

#### Agricultural protection zoning

Solano County strengthened its zoning ordinance after amending the General Plan in 1980. The plan, which incorporated recommendations from a citizens committee appointed to study land use issues, directs growth to the county's seven cities. It also created the following two categories of agricultural land:

- Essential Agricultural Land: This is productive farmland that has been identified by the local community as necessary to ensure a healthy agricultural economy. Criteria used to make this determination are soil capability, productivity level, parcel size and the overall size of a farming area relative to the ability of agricultural activities to support one another and to be a buffer from urban encroachment.
- Non-essential Agricultural Land: This is land that is to be retained for agricultural use but only until it is found to be necessary to convert these lands to non-agricultural use. The plan recognizes that some non-essential land may eventually be used for rural ranchettes, industry or urban expansion. The plan states, "Cities are encouraged to direct their growth into non-essential areas when the need for additional urban lands becomes necessary."

The zoning ordinance, as amended in 1980, applied these categories to the two categories of agricultural land that already existed: Extensive agricultural land, including non-irrigated agricultural land with lower quality soils (mainly grazing land), and intensive agricultural land, which is irrigated land with high-quality soils. The new zoning districts and their minimum lot sizes were:

- Extensive/non-essential land: 20 acres
- Extensive/essential land: 160 acres
- Intensive/essential land: 40 to 80 acres (the minimum is 40 if the landowner can prove the land is highly productive)

Prior to 1980, the minimum parcel size for intensive land was 10 acres, and for extensive land, 20 acres.

#### LAFCO amendments

As in Sonoma County, the Solano LAFCO has been relatively lax in prohibiting or limiting the annexation of agricultural land. In 1987, the LAFCO revised its annexation policy to include guidelines for steering growth away from prime agricultural land. The policy states that this should be done by creating urban growth lines and by encouraging and facilitating the infill of land within a city's limits. Infill is encouraged but not required, because a mandate could increase land values if landowners in the infill area were unwilling to sell. This could slow growth, according to the policy.

The LAFCO's sphere of influence policy is stronger. In 1993, the commission decided to shrink the spheres of influence around the county's major cities. In 1992, approximately 2,800 acres of Class I and II prime agricultural lands were removed from Vacaville's sphere of influence. Shrinking the spheres is designed to create open space between the cities and prevent the cities from merging. This serves the same purpose as creating community separators in Sonoma.

#### Other farmland protection techniques

Several other approaches that are unique in the North Bay have been implemented in Solano County. In 1974, Fairfield signed a 32-year agreement with the Solano Irrigation District to pay a penalty any time it extends water service to the Suisun Valley. The valley is dominated by prime soils and is heavily used for agriculture. It is also considered to be one of the county's most desirable areas for development. The agreement was an outgrowth of Anheuser-Busch's request to Fairfield to extend a water line to the Suisun Marsh located in the Suisun Valley. Critics of this proposal said that extending a water line would open up the Suisun Valley to major development. The request was denied and the agreement was signed. As of 1997, no requests had been made to extend services. The county signed a similar, 50-year agreement with the city of Vacaville in 1995.

In 1992, Solano County got a boost from the state with the passage of the Delta Protection Act. The act affects a delta that comprises 10 percent of the county's area, most of which is agricultural land and wetlands. It divides the delta into two zones. The primary zone, which represents 66 percent of the delta, is to remain in its current use. This was the only regional growth management bill passed by the state legislature and signed by the governor in 1992.

Also in 1992, the county and the cities of Benicia, Fairfield and Vallejo established a joint powers agreement designed to preserve 10,000 acres of open space between the three cities, most of which is in the county's extensive agriculture zone. Any proposed conversions of land within this zone must be approved by a group called the Tri-Cities and County Regional Park and Open Space Authority, which includes representatives of the three cities and the county. The Authority's preservation plan also calls for the use of TDR, PACE, clustering, Williamson Act contracts and private land protection initiatives in this area.

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IS IT WORKING?

Solano County is unique in California in the extent that its population is concentrated in cities. Only 5 percent of the county's population lives in the county's unincorporated areas. Scattered rural development is uncommon. Observers attribute this pattern of growth to the effectiveness of Measure A. Urban growth and annexations, however, still present a serious threat to farmland in Solano County. Funding for the Solano County Farmland and Open Space Foundation is not adequate to address this threat. The future of agriculture in Solano is likely to depend on the use of creative strategies to increase urban density and limit the expansion of cities onto prime agricultural land.

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Napa began using zoning to protect farmland in the 1950s, and Marin implemented APZ in the 1970s. Getting an early start on farmland protection made a big difference for these two counties. Between 1970 and 1995, Napa's population grew by approximately 32 percent; Marin's, by 11 percent. Despite this increase in population, between 1978 and 1992, land in farms increased by approximately 8 percent in Napa and 6 percent in Marin.

## CONCLUSION

Sonoma and Solano counties, which started their farmland protection efforts later, have experienced much larger increases in population. In 1970, Marin and Sonoma counties had approximately the same number of residents—209,000 in Marin and 205,000 in Sonoma. Solano had 172,000, and Napa, just 80,000. Between 1970 and 1995, Sonoma's population grew by 51 percent, Solano's by 53 percent. Between 1978 and 1992, Sonoma lost 11 percent of its land in farms, Solano 5 percent.

Another clear lesson from the North Bay counties is that coalitions are a good strategy to build support for farmland protection. In Marin County, farmers and conservationists worked together to create a PACE program. In Sonoma, disagreements between farmers and conservationists obstructed efforts to protect farmland during the 1980s. When the different interests began to work together on a task force, they developed a proposal that a wide range of residents could support.

Napa and Solano counties provide interesting examples of how farmland protection strategies can be implemented by popular vote. Napa's Measure J and Solano's Proposition A address the impermanence of zoning by making it difficult for elected officials to rezone land from agricultural to other uses. While other jurisdictions have held public votes on PACE programs, Napa and Solano are unique in their use of ballot initiatives to reinforce APZ.

The agricultural land base in Napa and Marin counties appears to be stable and the profitability of Napa's wineries provides extra insurance for the future of the county's agricultural sector. Farmland faces greater challenges in Sonoma and Solano, where population growth is causing rapid urban expansion.

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# FACT SHEET

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### DESCRIPTION

Estate planning should lay a framework for a smooth transition of farm or ranch ownership and management. It can provide for the needs of all family members, even those who leave the operation. It can help reduce high inheritance taxes on land made more valuable by inflation and non-farm development pressure. And proper estate planning can address the settlement problems that arise because land is not a liquid asset.

An estate plan is more than a will. A will is an important part of the plan because it names heirs, nominates an executor and appoints guardians for dependents. But a will alone cannot guarantee a secure future for the farm family, land or business.

A good estate plan should accomplish at least four goals:

- Transfer ownership and management of the agricultural operation, land and other assets;
- Avoid unnecessary transfer taxes (income, gift and estate);
- Ensure financial security and peace of mind for all generations;
- Develop the next generation's management capacity.

Laws, especially tax laws, change. Two important elements of estate planning are to set goals and then to revisit them over time as families, finances, priorities and laws change. As part of this goal-setting process, landowners must take inventory of their assets and be sure they fully understand who owns what and how titles to the property are held.

### BASIC TECHNIQUES

Farmers and ranchers should complete a will and keep it updated. A living will, health care

proxy and the designation of power of attorney are important ways to ensure that the family will be able to make decisions if the landowner becomes seriously injured or terminally ill. The estate planning process is a good opportunity to resolve business operation and management issues and to transfer assets. For tax and other reasons, it makes sense to start transferring operating assets as soon as both generations are comfortable with the commitment.

The estate planning and farm transfer process is also a good time for landowners to evaluate their present business arrangements and decide whether those arrangements meet their current needs and help achieve their goals. They should choose the most appropriate form of business organization, whether it is a sole proprietorship, partnership or corporation. Written agreements are essential.

### TRANSFER AND TAX REDUCTION STRATEGIES

- Agricultural conservation easements can permanently protect farmland from non-farm development and significantly reduce transfer taxes in cases where the market value of the land is much greater than its restricted value;
- Annual gifts of assets can help transfer the business and reduce transfer taxes;
- Buy/Sell agreements can ensure an orderly transfer of the farm business;
- Life insurance can be used to fund buy/sell agreements, establish trusts, provide for non-farming heirs or pay estate taxes;
- Limited partnerships or corporations can allow separation of management and ownership of the business, if desired;
- Long-term care insurance can protect family assets from being used to pay for nursing home costs;

## FARM TRANSFER AND ESTATE PLANNING

*For additional information on farmland protection, the Farmland Information Center offers publications, an on-line library and technical assistance.*

*To order AFT publications, call (800) 370-4879. The farmland information library is a searchable database of literature, abstracts, statutes, maps, legislative updates and other useful resources.*

*It can be reached at <http://www.farmlandinfo.org>.*

*For additional assistance on specific topics, call the technical assistance service at (413) 586-4593.*

- Minority discounts can substantially reduce transfer tax liability when minority interests of family farm businesses are transferred;
- Purchase of agricultural conservation easements (also known as purchase of development rights) programs can protect farmland, reduce taxes and provide cash for retirement and estate planning needs;
- Transferring management responsibility and asset ownership gradually can provide a smooth transition for the agricultural operation from one generation to the next;
- Trusts can provide financial security for surviving spouses, children and grandchildren.

### ISSUES AND OPTIONS

Liquid assets - cash and cash equivalents - are important to settling farm and ranch estates. Having cash allows farm families to pay expenses and medical bills without selling land or farm equipment. Liquid assets also may be used to divide an estate fairly among heirs.

It is important to remember that an equitable settlement does not necessarily mean creating equal shares of a farm or ranch estate, because the children who are involved in a family agricultural enterprise have generally contributed a substantial amount of their time, energy and resources to make the business succeed. These children may have substantial "sweat equity" in the operation they inherit.

Balancing commercial and conservation goals in farm estate planning also is challenging, because farms are businesses. However, with careful planning, farmers and ranchers can take advantage of conservation options that protect land without unduly restricting agricultural enterprises. These conservation options should be integrated into estate plans to ensure long-term protection of both land and farming operations.

Successful farm transfer and estate planning require a team effort - including family, financial, farm management, tax and legal expertise. Because plans must be tailored to individual circumstances, they must be designed to meet a variety of unique situations. Landowners must be sure to talk to their families and find the professional legal and financial assistance they need to accomplish their goals.

### ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001

The Economic Growth and Tax Relief Reconciliation Act of 2001 contains several provisions that affect farmland conservation and farm estate planning and transfer including:

- A dramatic increase in the estate tax exclusion: \$1 million in 2002-3 up to \$3.5 million in 2009;
- Repeal of Estate Tax in 2010;
- A reduction of highest tax brackets;
- Modified carryover basis in 2010;
- Removal of geographic limitations for donated conservation easements eligible for estate tax benefits under Section 2031(c) of the tax code; and
- A sunset provision.

These recent tax law changes have provided significant estate tax reductions as well as some additional uncertainty for estate tax planning and farm transfer. Farm and ranch owners should contact their advisers to determine how those changes will affect their planning efforts.

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THE BENEFITS OF SELLING  
AGRICULTURAL  
CONSERVATION EASEMENTS

Increasingly, state and local governments are establishing purchase of agricultural conservation easements (PACE) programs. PACE programs go by many names, often purchase of development rights, or PDR. In these programs, states, municipalities and qualified nonprofit organizations buy conservation easements from landowners to restrict non-farm development and protect land for agriculture.

The recent farm bill, known as the Farm Security and Rural Investment Act of 2002, contains significant increases in spending for its conservation titles. Nearly \$600 million of federal funds were authorized through the Farmland Protection Program (FPP) to match public and private funding sources to purchase agricultural conservation easements. (At publication time, the proposed rule for FPP calls for a name change to the Farm and Ranch Lands Protection Program.) The program will provide up to 50 percent of the appraised fair market value of the easement as matching funds to other sources, including the landowner. In addition, other federal programs such as the Wetlands Reserve Program (WRP) and the Conservation Reserve Enhancement Program (CREP) have funds available to purchase long-term easements designed to protect other natural resources such as wildlife habitat and wetlands.

If you live in an area that has a PACE program (Appendix C p. 57), selling an agricultural conservation easement can be a valuable estate planning strategy. It would allow you to change some of your real estate value into cash while continuing to own and operate your farm. Although you can use the income however you wish, for estate planning purposes you may want to set it aside for retirement or use it to distribute wealth equally among your children. This way you could leave your farm to your children who would like to farm and leave cash to your non-farm children. Many farm families have used the proceeds from the sale of an easement to reinvest in their farm businesses by purchasing more land, investing in new equipment or livestock, or paying down debt. Two recent studies by AFT have documented the fact that 75 percent of farmers who participate in PACE programs do just that.<sup>6</sup>

Most conservation easements are permanent, and permanent is a very long time. When considering whether a conservation easement is the right option for a farm or ranch, you and your family should carefully consider its impact on your land (are the reserved home sites properly located), your business (will the restrictions still allow you enough flexibility to

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24 <sup>6</sup> Robin L. Sherman, Suzanne Milshaw, Robert C. Wagner and Julia Freedgood, 1998, *Investing in the Future of Agriculture: The Massachusetts Farmland Protection Program and the Permanence Syndrome* (Northampton, Mass.: American Farmland Trust); Kirsten Ferguson and Jeremiah Cosgrove, 2000, *From the Field: What Farmers Have to Say about Vermont's Farmland Conservation Program* (Northampton, Mass.: American Farmland Trust).

expand or diversify your farm or ranching business), your finances (have you thought through the tax implications), and your estate planning and transfer plans (have you integrated the conservation component with the rest of your estate planning and transfer efforts).

Many easement programs only offer lump sum payment options. The sale of a conservation easement is considered the sale of a capital asset and is treated as capital gain to the extent that it exceeds the basis in the property. Revenue Ruling 77-414 allows the taxpayer to reduce the basis of the entire property if it is impractical or impossible to allocate the basis between the easement and the remaining restricted property. In addition, it should be noted that payments for easements are not excludable from income under Section 126 of the Internal Revenue Code, which applies only to cost-share payments for depreciable capital improvements.<sup>7</sup> However, creative use of PACE can expand your options and minimize your tax bill.

For example, Joel and Gertrude Schmidt own a 150-acre dairy farm in Lancaster County, Pennsylvania. Mostly retired, Joel was renting the farm to his son, Joe. Joel and Gertrude wanted to sell the farm at its agricultural value to Joe but needed additional funds to secure their retirement.

The Schmidts decided to sell an easement for \$450,000 to the Lancaster County Agricultural Preserve Board as part of their estate plan. Then they entered into an installment purchase contract with Joe for the farm's \$300,000 restricted value. This way, they realized the fair market value of their land, and Joe was able to buy the farm at its agricultural value.

To defer capital gains taxes on the proceeds from the sale of the easement, the Schmidts could have used a strategy called "like-kind exchange" under Internal Revenue Code Section 1031 instead. In this case, using a qualified third party, they could have traded the agricultural conservation easement for rental property in town. This could defer the capital gain and provide an income stream for their retirement. Either way, selling an agricultural conservation easement and the land at its restricted value would create a win/win option for the Schmidts.

If you are considering an agricultural conservation easement as part of your estate plan, think about how it interrelates to your other financial and family objectives. As the owner of your farm, you are in the best position to evaluate the options and determine what will work best for you.

*Selling an agricultural conservation easement would allow you to change some of your real estate value into cash while continuing to own and operate your farm.*

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<sup>7</sup> C. Graves, 88 Tax Court, Decision #43617.



# *Your Land is Your Legacy*



**W**ould you like to save your land for  
future generations?

**H**ave you made retirement plans?

**D**o you have heirs who want to  
farm and others who don't?

*Secure the future of your family and your land  
by starting to plan your estate today!*



*American Farmland Trust*



## *Have You Planned for the Future?*

You've made a big investment in your land. It's been hard work, and the land has given you and your family a good life. What happens to your farm or ranch when you retire—or if you become disabled, need long-term care, or die?

Are you like many producers, land-rich and cash-poor? This makes it hard to plan for retirement and your family's future. With good estate planning, you can give your family and your farm financial stability—without cashing in on your land.

Creating a good estate plan will cost some money. But leaving your family without a plan will eventually cost them much more—maybe even your farm. So call a trusted advisor, convene a kitchen-table meeting, hire an expert, whatever it takes. Just do it!



*Photo Bob Wagner*

## *What Are Your Goals?*

Estate planning is important—for your family, your business and your land. It is one of the most personal things you will ever do. Part of the process is figuring out what your goals are so you can develop strategies to accomplish them. Over time you must update your plan as your financial circumstances, your family relationships and the tax laws change.

Your estate is all the assets you accumulate over your lifetime and own when you die, such as your home, land, livestock, buildings and equipment, bank accounts, stocks, bonds and life insurance. More than a will, an estate plan also protects you and your family while you're alive. A will is not enough!

With careful planning, farmers and ranchers also can take advantage of conservation options that support their agricultural enterprises. In addition to tax and transfer issues, consider conservation options to protect the future of your land, as well as your farm or ranching business.



### *A GOOD ESTATE PLAN SHOULD ACCOMPLISH AT LEAST FOUR GOALS*

1. Transfer ownership and management of the agricultural operation, land and other assets;
2. Avoid unnecessary income, gift and estate taxes;
3. Ensure financial security and peace of mind for all generations;
4. Develop the next generation's management capacity.



## Your Conservation Options



Photo Jeremy Green

Farmers often say, *"The best way to protect my land is to farm it."*

This is true—but farming and ranching are risky enterprises. Land's market value often is higher for development than for agriculture, so it's tempting to sell out to retire or move. Land is especially vulnerable to conversion pressures when it passes from one owner to the next. Even families that plan to pass it on can lose their land without sound estate planning. And what about producers who have no heirs to take over?

Balancing commercial and conservation goals is a challenge. But it can work!

For most farms and ranches the most common tool is a conservation easement. Depending upon where you live, you may be able to sell a conservation easement, which can be a good option for families who have some heirs who want to farm and others who don't.

### Conservation Easements

Conservation easements are voluntary deed restrictions landowners place on their properties to protect natural resources such as agricultural land, ground and surface water, wildlife habitat, historic sites or scenic views. Easements are flexible documents tailored to

each property and the needs of individual landowners. Landowners retain title to their land and can restrict public access, use it as collateral for a loan or sell it with the restrictions in place.

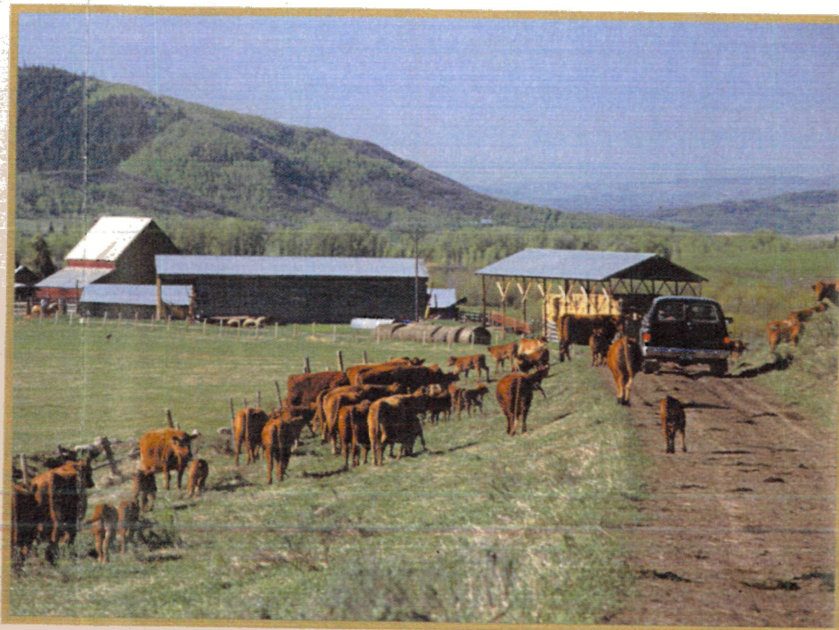


Photo Jeremy Green



**Agricultural conservation easements** are designed to keep land available for commercial farming or ranching. Used with other estate and financial planning techniques, agricultural conservation easements can help you transfer your farm or ranch to the next generation and reduce transfer taxes. Generally, landowners who donate or sell them continue to be eligible for state and federal farm programs. **Wetlands easements** are designed to restore and protect wetlands and their associated upland acreage. They are drafted specifically to enhance wildlife habitat and achieve other wetlands functions, such as protecting water quality. **Floodplain easements** permit activities that will protect and enhance normal floodplain functions. Compatible uses may include managed timber harvest, periodic haying or grazing.



## *Transfer and Tax Reduction Strategies*

- **Agricultural conservation easements** permanently protect farmland from non-farm development and can significantly reduce estate taxes in cases where the market value of the land is much greater than its restricted value.
- **Annual gifts** of assets can help transfer the business and reduce estate taxes.
- **Buy/sell agreements** can ensure an orderly transfer of the farm business.
- **Estate splits** between spouses enable both estates to use unified federal credits.
- **Life insurance** can be used to fund buy/sell agreements, establish trusts, provide for non-farming heirs or pay estate taxes.
- **Limited partnerships or corporations** can allow separation of management and ownership of the business, if desired.
- **Long-term care insurance** can protect family assets from being used to pay for nursing home costs.
- **Minority discounts** can substantially reduce gift and real estate tax liability when minority interests of family farm businesses are transferred.
- **Purchase of agricultural conservation easements** (also known as purchase of development rights) programs can protect farmland, reduce taxes and provide cash for retirement and estate planning needs.
- **"Special Use Valuation"** can significantly reduce estate tax liability when farm real estate owned by family members is transferred.
- **Transferring management responsibility and asset ownership** gradually can provide a smooth transition for the agricultural operation from one generation to the next.
- **Trusts** can provide financial security for surviving spouses, children and grandchildren.

### *It's never too soon—but it can be too late*

Estate planning and farm transfer involve some of the most important personal decisions you will ever make. Your choices will affect you, your family and your farm. Successful estate planning and farm transfer require effective communication and a team effort—including financial, farm management, tax and legal expertise. Because plans must be tailored to individual circumstances, they must be designed to meet a variety of unique situations. Make sure you find the professional assistance you need to accomplish your goals.

One thing is certain: You can't take it with you. The question is, do you want to have a say in its ultimate outcome? If so, take the next step.

*Get started on your estate plan today!*

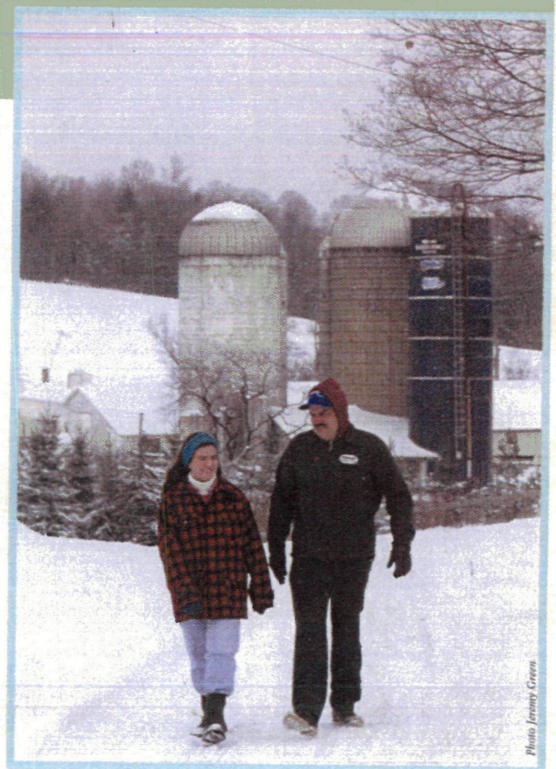


Photo: Jeremy Green