Agricultural land preservation in a land use planning perspective

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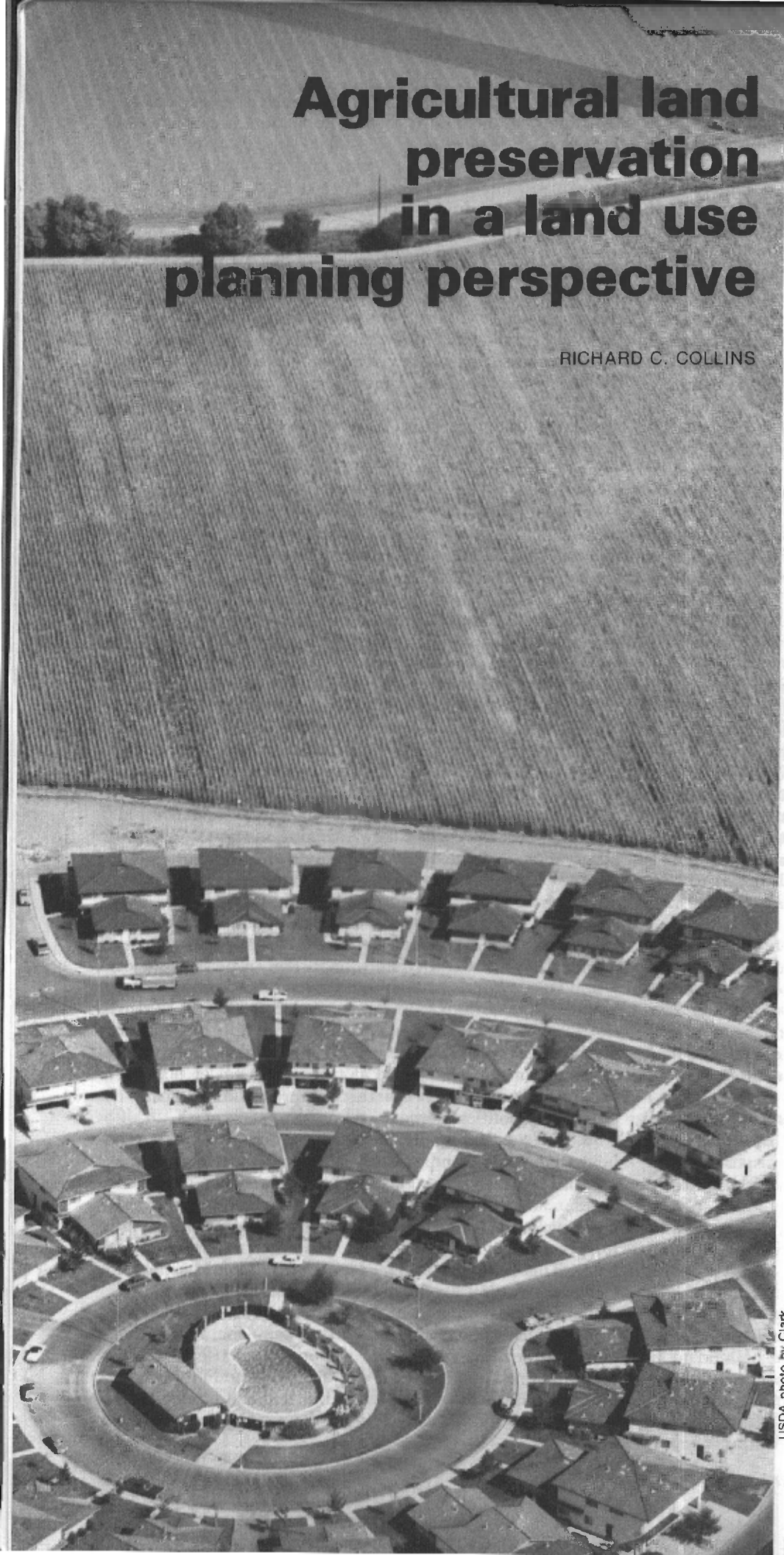

USDA photo by Clark

THE *Quiet Revolution in Land Use Control* (2), that landmark study published in 1971, began with these words: "This country is in the midst of a revolution in the way we regulate the use of our land. It is a peaceful revolution, conducted entirely within the law." Since the study's publication, the essential rightness of this observation has been confirmed; and even though the decibel level has increased slightly, it is more the breadth of concern and the rapid innovations in government action that really mark the interim years. If the publication were to be updated today, it might plausibly be titled *The Rapid Rise of Growth Management.*

It has become a cliche to say that land is a resource and not a mere commodity. But land has transformed itself beyond status as a resource, or even as the basic resource, to a lead indicator of public concern about the national purpose and direction.

Land use regulation has become the arena of concern for the issue of growth versus no growth. Actually the issue is not that simply stated, although the growth versus no growth rubric captures the essence of the underlying public contest. If land has always been "something they are not making more of," Americans have never had to take it too seriously because there was more than enough.

The increasing conflicts over land use throughout the nation indicate that if the land supply cannot be expanded it can shrink. It shrinks when there are more people, greater ecological awareness, doubts about the capacity to increase agricultural productivity through more technology, concern with environmental quality, and widespread uneasiness about urban sprawl.

But land use is not an isolated, separate problem. It is part of the entire growth mess. The mess consists of competing values and priorities tangled with past habits and anxieties about the future on a finite and vulnerable planet.

Land use conflicts and their resolutions represent a litmus test of national values, attitudes, and directions. To the extent the land is drained, mined, paved, farmed, maintained in wilderness, or urbanized, we can forecast

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directions and qualitative implications. Land use conflicts are immediate and direct issues in themselves, but they are also the surface of profound, if incoherent, policy choices. It is useful to keep this in mind as one assesses the recent developments in land use planning as they affect agricultural land.

A Multitude of Regulatory Authorities

Any attempt to survey and summarize recent land use planning developments necessarily involves subtraction and possibly distortion. In addition to the national government, there are 50 states, about 3,000 counties, 18,000 municipalities, 17,000 townships, and some 488 substate districts that have some power to plan, influence, or regulate land use. These governmental units differ in significant ways, and each faces different challenges. They are not coordinated, single organisms either. Often they are broad conglomerates serving as umbrellas for agencies with different purposes and constituencies. Finally, these governments interact both vertically and horizontally among themselves, which cumulatively affects land use in ways that are difficult to trace and understand.

When the *Quiet Revolution in Land Use* was published, the authors (2) maintained that the "ancient regime being overthrown is the feudal system under which the entire pattern of land development has been controlled by thousands of local governments, each seeking to maximize its tax base and minimize its social problems, and caring less what happens to all the others." The "tools" of that revolution were new laws taking a variety of forms, but each sharing a common theme—"the need to provide some degree of state or regional participation in the major decisions that affect the use of our increasingly limited supply of land" (2).

With hindsight, it appears the authors were too narrow in their assessment of the revolution's scope; they were too superficial in their identification of the ancient regime; and they underestimated the tools that would evolve from the struggle.

What is being overthrown is not just local government zoning powers. In fact, local governments seem to be major beneficiaries of the overthrow in many states. The ancient regime is obsolete, archaic, and destructive attitudes toward land and unexamined precepts about the respective powers of government and individual landowners in determining land use.

The tools of the revolution are not just new state regulations, although they are prominent instruments, but new conceptions of the role of planning, management, subsidy, taxation, and public acquisition at all levels of government. The revolution is not about what level of government is going to do what, although that is a significant issue, but in what governments, at whatever appropriate level, will perceive to be the significant choices, how those choices will be made, and what the appropriate balance will be between governmental objectives and private rights.

The new concern with growth policy and the issue of limits puts agricultural land in the crucial triangle of concern about resource conservation, environmental quality, and economic policy.

The Complexity of the Issue

As suggested earlier, one cannot tell what affects rural and agricultural land by looking only at the legislation that specifically addresses that subject. Changes in the internal revenue code regarding estate taxation, guidelines for implementing the Coastal Zone Management Act, state court decisions upholding or striking down sewer moratoriums or authorizing wetlands legislation, organizational changes made at the state levels for environmental programs, amendments to the zoning maps in counties throughout the nation, or the OPEC ministers' oil price negotiations—all affect agricultural land. These impacts may be direct and precedent-setting in that the courts may find analogies that will apply, or they may be remote in the sense that the economy will be affected, which will induce secondary effects.

The significant point is that anyone interested in agricultural land issues must cast a pretty broad net. For land use professionals this will be particularly frustrating because the widespread influences assure new responsibilities, new turbulence, and challenges to their expertise.

Even when one addresses an explicit issue related to farmland, one cannot be certain of the real purposes of the parties involved. It may just as well be defined as an urban sprawl issue, a concern for open space and recreational opportunities, a desire to exclude low-cost housing from the region, the desire to keep taxes low, or even to maintain a rural, small-town atmosphere. People are beginning to look at cities—the bigger the city the bigger the problem—and say there must be a better way.

To be sure there are concerns about the adequacy of world food supplies, domestic food prices, and the desirability of having a diversified local economy that includes agriculture or having locally grown produce in case of weather difficulties elsewhere. But as in all public issues, there are many actors and many motives. Politics do make strange bedfellows, and these arrangements may not only be temporary but tenuous.

Preserving Prime Farmlands

Perhaps the single, most important change in national policy toward rural and agricultural land is the drive to retain prime and unique farmland. The fact that the nation has gone from agricultural surpluses to full production in such rapid fashion has caused some uneasiness. The concern for energy prices, balance of payment considerations, and vague fears about climatic change, or at least unusual weather, has led to a pronounced risk-benefit orientation. What if we do need more land for agriculture? What will the needs for the future be? Is it not better to error on the side of safety? After all, food is not just any commodity.

Although many states had discussed measures to provide for the retention of agricultural land and open space prior to the 1970s, it has become a prominent national issue only in recent years. Perhaps the sponsorship of a seminar on the Retention of Prime Lands by the U. S. Department of Agriculture's Committee on Land Use represents a convenient benchmark. The publication and dissemination of the papers and recommendations of that meeting in 1975 quickened the already rising concern reflected in scattered sections of the country (7). One outcome of the seminar was a memorandum (3) by Secretary of Agriculture Earl Butz, issued in June 1976, titled "Statement of Prime Farmland, Range, and Forest Land."

In that memorandum, Secretary Butz described a very significant aspect of the agricultural land issue when he noted that at "the national level, individual losses appear small, but the cumulative effect can adversely impact domestic and international production." One of the major questions still under contention is just how serious a problem actually exists in terms of farmland loss. Without assessing the relative merits of the data or the orientations of the various parties, it can be said that there is some disagreement among informed observers.

Preliminary data from surveys conducted by the Soil Conservation Service indicate that somewhere between 2.5 and 3 million acres of cropland have been lost every year since the last survey of agricultural land was taken in 1967. What exactly has happened to this land and whether this is an alarming or merely worrisome trend is contestable.

Even within USDA there is disagreement about the agricultural land issue. The arguments only partly rest upon data. The more basic issues relate to the rationality of the conversion process and the degree of uncertainty or apprehension felt by the parties about the future. Regardless, one thing is clear: Past trends are not reliable indicators of the future. The projections based on increased productivity taken before the "food crisis," the "energy crisis," the "water crisis," inflation, devaluation of the dollar, rising foreign incomes, and poor weather in various parts of the world are obviously fictional in the extreme.

Secretary Butz' memorandum went on to say that USDA would "urge all agencies to adopt the policy that federal activities that take prime agricultural land should be initiated only when there are no suitable alternative sites and when the action is in response to overriding public need."

Similarly, federal environmental impact review procedures will call for USDA comment on federal actions that are proposed for prime agricultural lands. The significance of these policy changes is not yet clear, but it will induce a greater attention to mapping and identification of agricultural land, a careful monitoring of land conversion data, and increased assistance to state and local governments in their land use planning. Just as importantly, it will call forth a greater consciousness of the issue throughout the country.

The prime agricultural land issue has intensified an already wide interest among states and local governments in the conversion of farmland to urban-industrial uses. The fact that USDA is now addressing the issue lends legitimacy to state and local efforts to encourage the retention of land in agriculture, where the accompanying concerns are open space, aesthetics, antisprawl concerns growing from the energy conservation standpoint, and maintenance of a small-town or rural character.

A New Planning Perspective

From the standpoint of planning theory and practice, for the first time in this country the planning and regulation of urban expansion has an argument based upon a significant conservation element. That is, the shortage of land leads to a call for greater planning and balancing of a resource in short supply.

In Great Britain, where urban planning has preserved much of the rural character and separate identities of cities, the motivating desire has been to save the rural countryside as much as it has been based on theories of urban design. In this country we have had so much land that we only looked at one side of the equation. The fact the equation is now balanced tells us that we are losing the insulating space that made planning less important.

In addition to USDA activities with regard to prime farmland, there have

A USDA POLICY STATEMENT

The continued loss of lands well suited to the production of food, forage, fiber, and timber, and the degradation of the environment resulting from those losses is a matter of growing concern to the nation. Major consideration must be given to prime lands and the long-range need to retain the productive capability and environmental values of American agriculture and forestry. Developments that result in irreversible land use changes represent a loss of valuable natural resources. The process is dramatic in some local areas. At the national level, individual losses appear small, but the cumulative effect can adversely impact domestic and international production.

The concerns about wise use of prime lands are local, statewide, and national in scope. The loss of land suitable for sustained crop and wood production in a region or locality can influence the viability of supporting supply, processing and marketing facilities. Continued loss of farmland, range, and forestland production affects the economy locally, influencing employment and income levels. In addition, it limits other qualities essential to the well-being of our people.

Land use alternatives are generally available that can minimize impacts on prime lands. Such alternatives should be explored carefully, particularly where federal funds are involved. When possible, land use decisions should be avoided which irrevocably commit prime lands to nonfarmland, nonrange, and nonforestland uses, thereby foreclosing the options of future generations. USDA will urge all agencies to adopt the policy that federal activities that take prime agricultural land should be initiated only when there are no suitable alternative sites and when the action is in response to overriding public need. The long-term implications of these land use conversions on the productive capacity of our farmland, range, and forestland, as well as on environmental impacts, should be evaluated and made known to the public.

The Department, through the Land Use Committee, counterpart state and local committees, and the activities of all concerned agencies, groups, and organizations will advocate the protection of prime and unique farmlands, range, and forestlands from premature or unnecessary conversion to nonagricultural land use. Urban or built-up uses and water impoundments that preclude utilization or recovery to high state and local interests

been other significant actions taken at the federal level. Particularly important are the unfolding developments in the Environmental Protection Agency's 208 water quality planning program and the activities being conducted under the Coastal Zone Management Act. But the really unusual and significant land use changes are taking place at the state and local level. Table 1 presents a national summary. The table cannot, however, measure the significance, problems, or momentum behind these various programs. Following is a classification and brief appraisal.

State Planning and Enabling Acts

States are strengthening the powers granted to local governments through planning and zoning enabling acts. Most of these state enabling acts are based upon imitations of model legislation formulated during the 1920s. The laws often confine their grant powers to the alleviation of conditions concerned with public health and safety in urban settings. Typically, these legislative grants of power to local governments have been strictly interpreted: If the law does not specifically encourage particular objectives or grant very specific powers, a locality cannot legally pursue them.

The encouragement and/or authorization of staged development, greater flexibility in housing design through planned unit provisions, and other growth control measures will ultimately lead to more confident and assertive planning and regulation. These additions to local powers, coupled with encouraging court decisions, will also lead to experimentation with a variety of measures affecting agricultural land.

Mandatory Planning and Zoning

The state enabling laws frequently have been permissive. Local governments have been free to invoke them if they wish. Most urban areas have chosen not to employ them because they consider them to be unnecessary or undesirable. Now states are beginning to mandate local planning and/or zoning by all governmental jurisdictions. In some instances the failure to plan and/or regulate land use means that specific state grant moneys or powers are denied a jurisdiction. In other cases the failure to plan at the local level causes this function to be performed by a regional or state agency.

Mandated local planning has the effect of encouraging local attention to growth issues. It may help local governments anticipate some of the problems provoked by recreational development, second-home subdivisions, and industrial development in rural areas. It also tends to encourage the use of substate regional bodies as staff arms for planning and regulation. Recent changes in the U. S. Department of Housing and Urban Development's 701 regulations require land use plans of all governments receiving planning assistance. Frequently, these are the regional agencies that are working to assist rural areas in their planning activities.

Preferential Assessment

Preferential assessment, in a generic sense, covers any scheme that taxes agricultural land at some lesser rate than the speculative value that it possesses. Table 2 distinguishes between pure preferential assessment, deferred taxation, and restrictive agreements. The table also shows some of the more detailed features of the laws that more than 40 states have adopted.

These laws are usually adopted to ease the tax burden for farmers and other holders of open space. Often they have the additional purpose or at least were promulgated as ways of preserving agricultural land or open space. This rationale assumes that by reducing tax burden on such land the rate at which the land will be converted to higher uses is reduced.

in retaining prime farmland, range, and forestland for production are often based on concerns other than the demands for food, forage, fiber, or timber. Open space, environmental quality, visual quality, and local economic impacts are often cited as reasons for protecting these lands. Many of these lands have modest production capability, but are valued because of location and other unique factors that make them of state or local importance. Retaining farmland, range, and forestland enhances local values and protects resource options for the future. The Department will make specific efforts to assist states and localities to identify lands of state and local concern and support efforts to protect these lands from premature or unnecessary conversion to other uses.

The Statement on Land Use Policy (Secretary's Memorandum No. 1827) and the following specific policies are set forth for the guidance of the agencies in this Department in regard to prime lands:

1. Advocate the protection of prime lands from premature or unnecessary conversion to other land uses. Priority will be given to prime lands threatened by conversion to irreversible land uses.

2. Assure that environmental impact statement procedures and review processes thoroughly consider and evaluate the impact of major federal actions on prime farmland, range, and forestlands.

3. Emphasis will be placed on programs to inventory, assess, and evaluate the nation's farmland, range, and forestlands to assist decision-makers and the general public's understanding of the kind, extent, location, and current status of prime lands.

4. Cooperative efforts with states, local governments, and universities will be initiated to assure concerns for food, fiber, and wood production are recognized and emphasized in the identification of prime lands.

5. USDA agency actions and programs will give thorough consideration to the local, state, and national concerns for the retention of prime lands. The necessity of conversion of these lands to other uses will be considered only after a determination that feasible alternatives do not exist or that overriding public needs warrant the action.

6. The agencies in the Department will review their programs to insure consistency with the intent of this supplement. — *JOHN A. KNEBEL, Acting Secretary, U. S. Department of Agriculture, Secretary's Memorandum No. 1827, Supplement 1, "Statement on Prime Farmland, range, and Forest Land," issued on June 21, 1976.*

Table 1. State land use programs.

State	Type of State Program										
	Comprehensive Permit System[a]	*Coordinated Incremental*[b]	*Mandatory Local Planning*[c]	*Coastal Zone Management*[d]	*Wetlands Management*[e]	*Power Plant Siting*[f]	*Surface Mining*[g]	*Designation of Critical Areas*[h]	*Differential Assessment Laws*[i]	*Floodplain Management*[j]	*Statewide Shorelands Act*[k]
Alabama				X		X	A			X	
Alaska		X		X		X			B		
Arizona		X				X			A	X	
Arkansas						X	A, B		A	X	
California		X		X		X	X		C	X	
Colorado						X	X	X	A	X	
Connecticut		X		X	X	X			B	X	
Delaware		X		X	X				A		X
Florida	X	X	X	X	X	X	A	X	A, C		
Georgia		X		X	X		A, B				
Hawaii	X	X		X		X	X	X	B	X	
Idaho			X				X		A		
Illinois				X		X	A, B		B	X	
Indiana		X		X			A, B		A	X	
Iowa							A, B		A	X	
Kansas							A, B				
Kentucky						X	A, B		B		
Louisiana				X	X						
Maine	X	X	X (LTD)	X	X	X	A	X	B	X	
Maryland		X		X	X	X	A, B	X	B	X	
Massachusetts				X	X	X			B		
Michigan				X			X		C	X	X
Minnesota		X		X	X	X	X	X	B	X	X
Mississippi				X	X					X	
Missouri					X	X	X		A	X	
Montana		X	X			X	A, B	X	B	X	X
Nebraska			X			X			B	X	
Nevada		X	X			X		X	B		
New Hampshire				X	X	X			B, C		
New Jersey				X	X	X			B	X	
New Mexico		X				X	A		A		
New York	X	X		X	X	X	X	X	B	X	
North Carolina		X		X	X		X		B	X	
North Dakota						X	A		A		
Ohio				X		X	A		B		
Oklahoma							X		A	X	
Oregon		X	X	X		X	A	X	B		
Pennsylvania				X	X	X	A	X	B		
Rhode Island		X		X	X	X			B		
South Carolina				X		X	A		B		
South Dakota							A	X	A		
Tennessee						X	A, B				
Texas				X	X		X		B		
Utah		X					A		B		
Vermont	X	X			X	X	X		C	X	
Virginia			X	X	X		A, B		B		
Washington		X		X	X	X	A		B	X	X
West Virginia							A, B			X	
Wisconsin		X		X	X	X	X	X		X	
Wyoming		X	X			X	A		A		

SOURCE: Prepared by the Council of State Governments, based on information collected by the Council of State Governments. *Land Use Planning Reports 1974 and 1975*; and the U. S. Department of the Interior, Office of Land Use and Water Planning; and the Resource Land Investigations Program. Data compiled October 1975. Taken from *State Growth Management*, Council of State Governments, May 1976.

[a]State has authority to require permits for certain types of development.

[b]State established mechanism to coordinate state land use related problems.

[c]State requires local governments to establish a mechanism for land use planning (e.g., zoning, comprehensive plan, planning commission).

[d]State is participating in the federally funded coastal zone management program authorized by the Coastal Zone Management Act of 1972.

[e]State has authority to plan or review local plans or the ability to control land use in the wetlands.

[f]State has authority to determine the siting of power plants and related facilities.

[g]State has statutory authority to regulate surface mines. (A) State has adopted rules and regulations. (B) State has issued technical guidelines.

[h]State has established rules, or is in the process of establishing rules, regulations, and guidelines for the identification and designation of areas of critical state concern (e.g., environmentally fragile areas, areas of historical significance, etc.).

[i]State has adopted tax measure which is designed to give property tax relief to owners of agricultural or open space lands. (A) Preferential Assessment Program—Assessment of eligible land is based upon a selected formula, which is usually use-value. (B) Deferred Taxation—Assessments of eligible land is based upon a selected formula, which is usually use-value and provides for a sanction, usually the payment of back taxes, if the land is converted to a non-eligible use. (C) Restrictive Agreements—Eligible land is assessed at its use-value, a requirement that the owner sign a contract, and a sanction, usually the payment of back taxes if the owner violates the terms of the agreement.

[j]State has legislation authorizing the regulation of floodplains.

[k]State has legislation authorizing the regulation of shorelands of significant bodies of water.

A basic problem, however, is that land normally is assessed at its potential future value, not at its existing value in current use. As Philip Raup (*6*) noted, "At a minimum, rural lands within a radius of 50 miles of our larger cities have market values that cannot be supported in agricultural use. Along major highways this radius extends to 80 miles or more."

The attempt to preserve farmland by reducing taxes, quite apart from an evaluation of its effectiveness in achieving that purpose, raises difficult legal, technical, and administrative problems. What is farmland? What is its actual value as farmland? Should the state pay a subvention for the taxes that will be lost to the locality by attempting to retain land in agriculture? But—the significant question is whether, in spite of all of these difficulties, preferential assessment works to preserve farmland and/or open space.

A recently completed study by the Council on Environmental Quality, *Untaxing Open Space* (*5*), represents the opinion of most careful observers and analysts:

". . . differential assessment laws in general work well to reduce the tax burden on farmers. Acting alone, however, they are not very effective in preserving current uses. It is only when such laws are combined with other effective land use mechanisms in rural areas that they contribute to successful long-term preservation of open lands."

Preferential assessment laws will likely remain a major part of the effort to retain open space and agricultural land. It is also likely that they will increasingly be changed to permit additional land use planning and control measures dealing with conversion to other land uses. For that reason, we might consider some of the more significant issues and examples.

Pure preferential assessment is taxation at reduced rates without any roll-back or penalty taxes if the land is converted to another use. It is, in effect, a tax abatement program.

Deferred taxation is a preferential assessment with features to recover taxes that would have been paid for a specified number of years if a change in land use occurs. These laws often have an interest rate attached to the deferred taxes.

Restrictive agreements combine preferential assessment with legally enforceable restrictions on the use of land. Unlike the other two approaches, restrictive agreements effectively inhibit a landowner from developing his land until the end of the period agreed upon in the contract.

The California Law

California's Williamson Act is the best known example of a restrictive agreement and the one where substantial experience has permitted evaluations of its effectiveness in preserving agricultural land. Although the evidence is mixed, the law clearly has been ineffective in keeping land in agriculture in developing areas because landowners have not volunteered to participate in the program. It probably is not too much of a simplification to say that where the restrictions are acceptable, they are not needed. Where the restrictions might be needed, they are not acceptable to landowners (*5*).

The New York Law

New York's agricultural districting law has also been a prominent example of planning and restrictive agreements. In effect since 1971, the law was a compromise between proposals for agricultural zoning and pure preferential assessment. In effect, that is what all restrictive agreements represent. But the New York law permits farmers to initiate a process of agricultural districting that includes certain restrictions on local governments in order to promote agriculture (*4*).

A minimum of 500 acres must be included in a districting proposal. After a series of local hearings, state agencies review a proposal to see that it is consistent with state policies and plans. The New York commissioner of environmental conservation finally certifies state approval to the local government in which the district is located. If the county approves it or fails to veto it, the agricultural district is created. It is then reviewed periodically to see that it is operating within its purposes (*4*).

Once a district has been created, all participating farmers with more than 10 acres that have been used over the preceding two years for agricultural production and have average gross sales of $10,000 or more are eligible to apply for preferential taxation. In addition, the powers of local government are restricted in a number of ways: Ordinances regulating farm practices are limited. State agencies must modify their practices wherever possible in order to encourage commercial agriculture and to reduce the capacity of the land to be converted to other uses. The right of eminent domain by public agencies within the district is modified to the extent that alternative sites for a public project must be considered. Restrictions are also placed on government funding for programs that would encourage nonfarm development, and the power of special districts to impose benefit assessments on agricultural land for certain public improvements is constrained.

The New York law has features that go beyond the usual restrictive agreement in that it confers an agricultural priority calling for constraints on public actors. This restriction tends toward growth management by explicitly acknowledging and restricting the growth-producing potential of public expenditures and actions.

California Assembly Bill 15

Perhaps the most interesting proposal for explicit measures to preserve farmland is Assembly Bill 15 that has passed the California Assembly in the form of an amendment to the Williamson Act. This bill could be a harbinger of things to come whether it passes this session or not.

The bill's preamble reflects the concern for international food supplies and the fear of irreversible commitments if land is taken out of agriculture. It also addresses the issue of urban sprawl as a costly form of growth. But unlike other state differential assessment programs, Assembly Bill 15 crosses the threshold from merely inducing cooperation by landowners through tax preferences to mandated participation and zoning. The tax assessment merely acknowledges the reduced value of the land in its more or less permanent status in the existing use.

People like myself, whose principal observations and studies of land use have been in urban areas, are sometimes surprised by the commonly held assumption that rural land cannot be regulated under the police power, but can only be retained in beneficial uses by providing tax or cash incentives. Historically, land use regulation de-

veloped in urban areas to meet specific problems. But today, land use issues encompass concerns that affect many more people, with more adverse potential, than the zoning laws of the 1920s and 1930s. Public regulation unquestionably will grow as more and more people become concerned about these issues and demand governmental action.

Assembly Bill 15 is also important because it implicitly challenges the associated belief that property rights include the land's developmental value. As long as this assumption dominates, the tendency will be to feel that payment must be made for any diminution of that speculative value made by public regulation.

The California proposal is the clearest indication we have that assumptions about the extent of property rights are going to be challenged directly in more than isolated culturally or environmentally sensitive areas. The bill, if passed, would restrict land to its existing use, if that use meets the appropriate criteria, without compensation.

The bill would create a State Agricultural Resources Council with responsibility for identifying, classifying, and mapping prime agricultural land. Once designated and mapped, the law would restrict the subdivision of that land, except in certain cases, to no less than 80 acres. In effect, once the land had been certified as meeting the requirements in the law for prime agricultural use, local governments could not allow any other use.

The owner, whose development rights for other uses would be constrained by the law, and the local government, which would lose taxes, have opportunities to challenge the agricultural classification. The owner could assert a vested interest in some other use. The local government could exclude the designated land if "such land, as a result of unavoidable circumstances, has been irreversibly changed so that it no longer will be able to be classified as prime agricultural land or that such land is needed for urban growth."

If the Agricultural Resources Council would choose to deny the requested exclusion of the land from the prime category, that decision would be considered "final and conclusive in the absence of fraud or prejudicial abuse and discretion." If there were a judicial appeal of the decision, "the court shall not exercise its independent judgment on the evidence but shall only determine whether the decision was supported by substantial evidence in light of the whole record." The Revenue and Taxation Code for California would be amended to read: "There shall be a conclusive presumption that the restrictions limiting the use of such land to agricultural purposes will not be removed or substantially modified in the predictable future and that such restrictions will substantially equate the legally permissible use thereof."

If this legislation should pass the California Senate and be signed by the governor, California would become the only state on the mainland with planning to preserve agricultural land with state designation, with state supervision of local development over agricultural land, and with required participation by agricultural landowners if their property meets prime agri-

Table 2. Provisions of state differential assessment laws.

	Pure Preferential Assessment														*Deferred Taxation*																													*Restrictive Agreements*				
Program Characteristics	Arizona	Arkansas	Colorado	Delaware	Florida 1	Idaho	Indiana	Iowa	Missouri	New Mexico	North Dakota	Oklahoma	South Dakota	Wyoming	Alaska	Connecticut	Hawaii 1	Hawaii 2	Illinois	Kentucky	Maine	Maryland	Massachusetts	Minnesota 1	Minnesota 2	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New York 1	New York 2	North Carolina	Ohio	Oregon	Pennsylvania 1	Pennsylvania 2	Rhode Island	South Carolina	Texas	Utah	Virginia	Washington	California	Florida 2	Michigan	New Hampshire	Vermont
Year of Enactment	67	69	67	68	59	71	61	67	75	67	73	74	67	73	67	63	61	73	70	70	71	56	73	67	69	73	74	75	72	64	71	71	73	74	63	68	74	68	75	66	69	71	70	55	67	74	73	69
Eligible Uses																																																
Agriculture	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•		•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•		•		•
Open space, envir. protection	•											•				•	•				•							•	•							•		•				•	•			•	•	
Timber or forest	•	•		•	•		•	•	•	•		•				•													•	•			•			•	•	•				•	•					
Recreation	•											•					•				•	•			•				•																•			
Additional Eligibility Requirements																																																
Minimum farm income required				•					•						•								•	•		•		•			•	•	•	•			•			•	•							
History of eligible use required			•	•									•	•			•		•	•			•							•	•	•	•	•	•		•			•	•							
Minimum length of tenure with family									•															•									•															
Land must be planned for eligible use																	•	•													•					•						•	•	•		•		
Land must be zoned for eligible use														•													•				•					•								•				
Sanctions on Conversion																																																
Rollback taxes collected (no. of yrs.)															7		*	10	3	2	10/5	2	4	3	7	4	5	7		2	5		5	4	10	5	7	2	5	3	5	5	7		*	7		
Interest on deferred taxes															•		•	•	•		•						•	•					•		•	•	•					•	•		•			
Penalty based on market value in year of conversion																•							•						•			•												•			•	
Other penalty																																											•	•				
Restrictive Agreements																																																
Minimum length of term (no. of yrs.)																																												10	10	10	10	
Scope of Program																																																
Statewide	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•		•	•	•	•	•		•					
Local option																																				•						•		•	•	•	•	•
Voluntary, requires application		•		•	•				•	•					•	•	•		•	•	•		•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Automatic for eligible lands	•		•			•	•	•			•	•	•	•				•				•																										
State Subvention Payments Provided to Offset Revenue Loss															•																	•												•				

SOURCE: *Untaxing Open Space*, published by the President's Council on Environmental Quality, April 1976, page 13.
*Indicates that there is a total roll back of deferred taxes.

cultural land standards.

Significantly, the law, as proposed, distinguishes between land use regulation for general categories of use and land use planning of the site itself. It specifically limits any public agency from prescribing or regulating agricultural operations or management practices, including, but not limited to, "types of crops to be cultivated, harvested, or processed; cropping patterns; irrigation, cultivation, or yield techniques."

Easements and Development Rights

Some states and localities are experimenting with various measures to retain open space and agricultural land through payments to owners for keeping the land in its desirable state. The assumption is that either because of simple equity or the belief that owners have "property rights" to some potential development value compensation should be made for this retention. Needless to say, no large-scale application of this approach has been undertaken because of the costs. Easements and purchases of development rights have been found to be nearly as expensive as buying the land itself in some instances.

The transfer of development rights is another much discussed innovation that would confer upon those whose land should not be developed the right to transfer the development value to another site. The value of this development right, either through purchase or use, would constitute compensation for the loss of speculative value on the restricted land. A number of jurisdictions are experimenting with this idea, and it is even in limited use for some purposes. So far it has not been a significant factor in preserving open space or agricultural land, however.

Special Concerns and Permits

Florida is the best known case of the "areas of critical state concern" designation, which was derived from the American Law Institute's Model Land Development Code (*1*): "A critical area of state concern can be best described as a geographic area significantly affected by, or having a significant effect upon natural, historic, or environmental resources of regional or statewide importance." Designated areas are subject to statewide planning review and/or management.

Planning for special concerns is a designation I employ for legislation that is aimed at specific functional or geographic concerns within various states. As table 1 shows, there are increasing numbers of states that have passed legislation concerned with siting of energy facilities, floodplains, shorelands, and, in Vermont, mountainous areas that are favored for recreational development. Collectively, these laws cover a substantial geographic area and affect rural development and agricultural land.

Permit processes are similar to both types of planning mentioned above, but in their comprehensive form they amount to environmental impact assessment before development permission is granted. Vermont's law is the best known. It requires regional review of developments above a certain acreage to assess the impact of the proposed development on water supplies, air and water pollution, soil erosion, highway congestion, and the burden on a municipality to provide education and other public services.

Growth Management

All of the features I have discussed in some way relate to growth policy. The planning methods and state actions necessarily assume that growth on existing trajectories creates undesirable outcomes with regard to open space and agricultural land. Experience with these incremental improvements and innovations will tend to cause more comprehensive growth policies.

Some 18 states already have formulated some form of growth strategy, and 21 other states have established growth commissions or their equivalent to assess strategic choices. The role of land in the management of these choices will be central to the outcomes. Agricultural land will have to be considered specifically.

Patrick Moynihan once wrote that the planner is traumatized by the fact that everything relates to everything else. That those connections are becoming more pointed every day is a measure of the difficult choices we face. But the situation might also be considered hopeful, for at least we are beginning to understand what we must do.

As for agricultural land, we must necessarily consider it directly. And as we do, we tend to give urban policy a perspective that we should have considered long ago.

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3. Butz, Earl. 1976. *Statement of prime farmland, range, and forest land.* Memorandum no. 1827, supp. 1. U. S. Dept. Agr., Washington, D. C.
4. Conklin, H. E. 1976. *Property tax incentives to preserve farming in areas of urban pressure.* Proc., 1975 Tax Forum. Intl. Assn. Assessing Officers, Chicago, Ill.
5. Council on Environmental Quality. 1976. *Untaxing open space* (exec. summary). Washington, D. C.
6. Raup, Philip M. 1975. *Urban threats to rural lands: Background and beginnings.* AIP Journal (Nov.): 271.
7. U. S. Department of Agriculture. 1975. *Perspectives on prime lands.* Washington, D. C. □

Important dates to remember

October 17-20
American Forestry Association Annual Meeting
Disney World, Florida
Contact: AFA, 1319 18th Street, N.W. Washington, D. C. 20036

October 17-22
Eighth International Conference on Water Pollution Research
Sydney, Australia
Contact: Office of Secretariat, G.P.O. Box 2609, Sydney, N.S.W. 2001, Australia

November 8-11
Sixth National Institute on Park and Grounds Management
Atlanta, Georgia
Contact: NIPGM, Box 1936, Appleton, Wisconsin 54911

November 9-13
First Conference on Scientific Research in the National Parks
New Orleans, Louisiana
Contact: American Institute of Biological Sciences, 140 Arlington Boulevard, Arlington, Virginia 22209

November 14-19
International Symposium on Industrial Wastes and Environment
Caracas, Venezuela
Contact: Richard Abbou, 115 Rue de la Pompe-F 75116, Paris, France