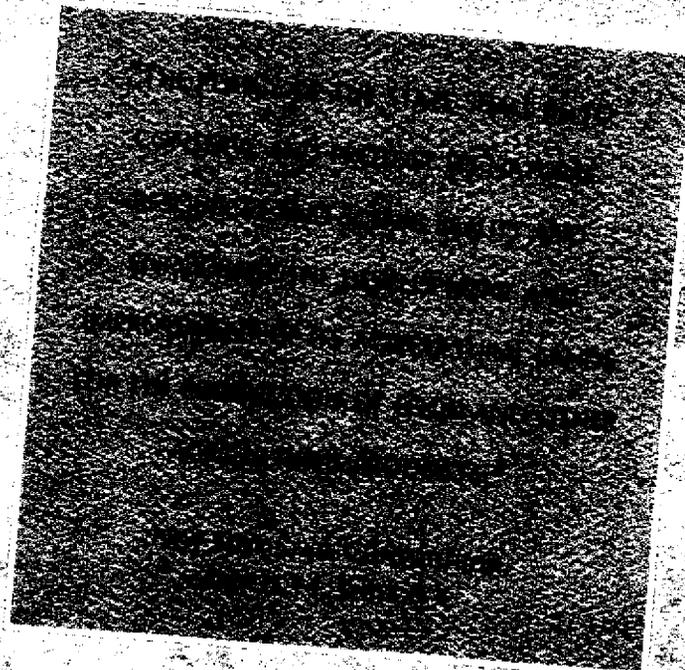


**AGRICULTURAL
AND
FARMLAND PROTECTION
FOR
NEW YORK**

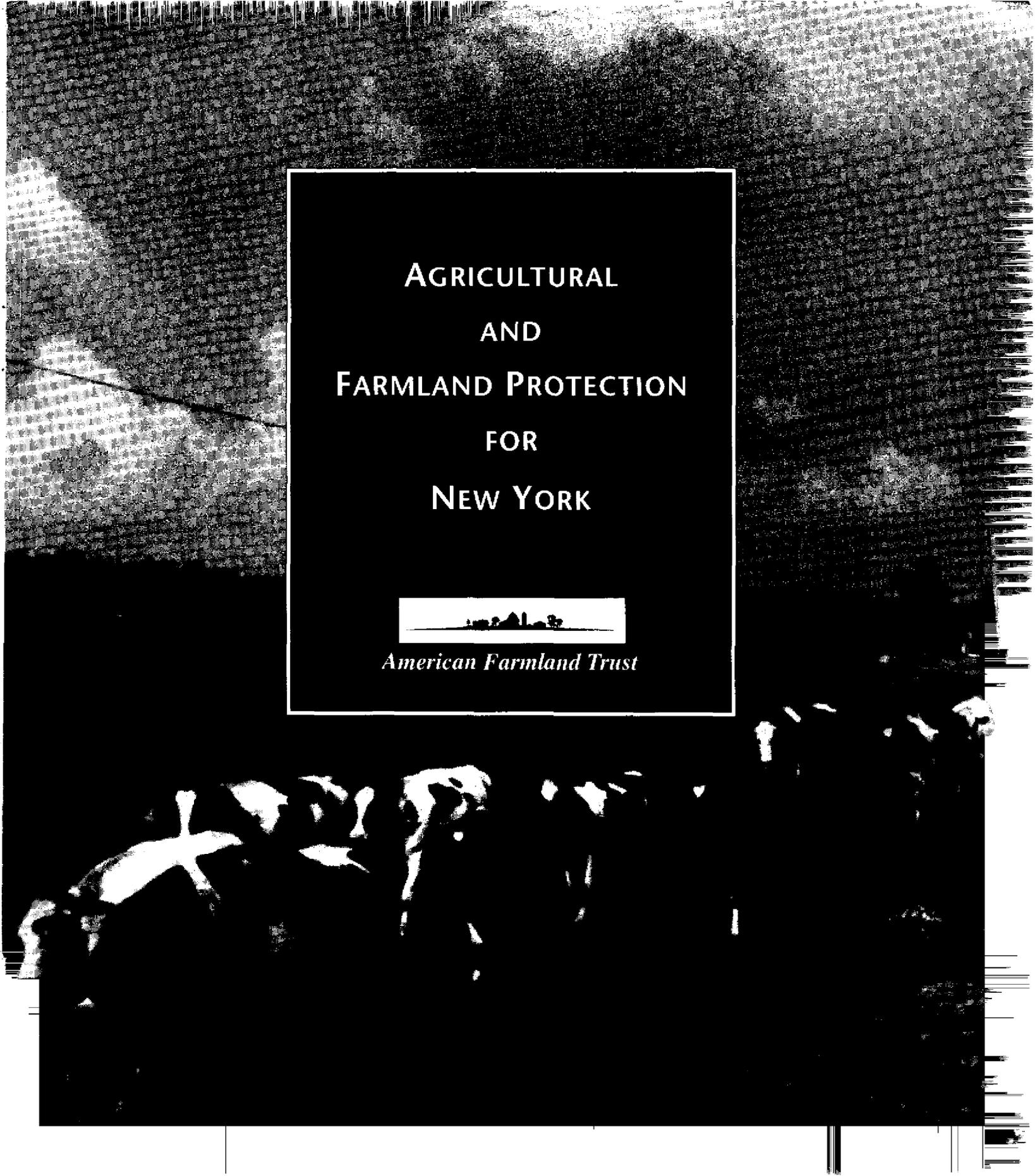



American Farmland Trust
August 1993

AGRICULTURAL
AND
FARMLAND PROTECTION
FOR
NEW YORK



American Farmland Trust



AGRICULTURAL
AND
FARMLAND PROTECTION
FOR
NEW YORK



American Farmland Trust

American Farmland Trust is a private, nonprofit conservation organization founded in 1980 to protect the nation's agricultural resources. AFT works to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment. Its action-oriented programs include public education, technical assistance in policy development and direct farmland protection practices. Minimum annual membership is \$20. For membership information, contact the National Office. For information on farmland protection activities in New York, contact the New York Field Office.

This handbook is a publication of AFT's Northeastern Office.

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Respectfully Submitted,

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August 1993



FOREWORD

New York has a long history of advancing the science and business of agriculture — from production research to direct marketing. In the process, the state has addressed many of the modern-day pressures that force farmers to sell out: skyrocketing land prices, development interests, rising property taxes and the suburbanization of rural communities.

Empire State officials have confronted the new circumstances facing farmers and rural communities. In 1971, the New York State Legislature passed the Agricultural Districts Law. Based on the theory that the best farm neighbor is another farmer, the program encourages farmers to join together and commit their lands to agricultural use in return for property tax relief and protection from outside intrusions.

In 1992, New York went a step further by passing the Agricultural Protection Act. Heralded as the most sweeping farmland protection legislation since the passage of the agricultural districts law, this act strengthened farmers' right to farm, placed greater scrutiny on state projects that may negatively affect agriculture and set in motion the development of county agricultural and farmland protection strategies.

Local governments across the state have also complemented state actions with their own farmland protection initiatives. Most celebrated among these is Suffolk County's purchase of development rights program, which buys permanent, protective restrictions on farmland. Implemented in 1977, it was the first of its kind in the nation.

It is to advance the discussion and investigation of appropriate farmland protection programs and techniques that American Farmland Trust has chosen to offer the following handbook. Drawing on a myriad of successful experiences with farmland protection techniques from New York and around the country, AFT's guide introduces the tools and raw materials for New York farmers and local officials to assume the task of charting the future of the state's precious farmland resources.

Ralph Grossi
Washington, D.C.
August 1993



INTRODUCTION

The primary purpose of this handbook is to help New York's recently mandated agricultural and farmland protection boards accomplish the challenging task set out for them in the Agricultural Protection Act of 1992. The handbook is also meant to provide needed information to state and local officials, land use professionals, farmers and farmland protection advocates who want to ensure a future for the state's valuable agricultural land. As a national farmland conservation organization, American Farmland Trust has far-reaching expertise in analyzing and applying farmland protection strategies nationwide. With a field office in New York, AFT has worked closely with local officials and the state legislature to promote farmland protection policies and to advise on the appropriate use of existing tools to guarantee the future of New York's farmland resources.

The first part of this handbook reviews the question, "Why save farmland?" pointing to the economic and environmental importance of agriculture in the Empire State. Section II is a succinct presentation of the Agricultural Districts Law, recently amended by the Agricultural Protection Act of 1992. It also covers other important legislation relevant to state farmland protection efforts. Section III is an informative guide to existing techniques to protect farmland and ways to incorporate agriculture into local planning efforts. Sections II and III are meant to complement and reinforce each other, so there are many references back and forth to help readers see the connections between state laws and existing farmland protection tools. Finally, the handbook provides broad policy recommendations to help county agricultural and farmland protection boards chart a course for their own futures. An extensive reference section completes the handbook, and AFT is always available to assist county boards, state and local government and the agricultural community in protecting New York's most valuable natural resource: productive farmland.



WHY SAVE FARMLAND?

AGRICULTURE IS MORE THAN JUST
FARMLAND OR FARM FAMILIES
INVOLVED IN THE ENTERPRISE OF
FARMING. IT IS A NETWORK OF
FARM-RELATED BUSINESS AND
SUPPORT SERVICES DEPENDENT
UPON THE ACTIVITY OF
FARMING — OR THE PRODUCTS
PRODUCED BY FARMERS.

THIS COLLECTION OF BUSINESSES IS
THE ECONOMIC BACKBONE OF
MANY RURAL COMMUNITIES
THROUGHOUT THE STATE.



SECTION 1

WHY SAVE FARMLAND?

Open farmland is many things to many people. To some, it is the fertile resource of food production, home to wildlife or great hunting ground. To others, it is a scenic vista or a floodwater staging area. To still others, it is drained, cleared land that is perfect for new houses.

A unique and finite natural resource capable of growing food and fiber, farmland is the essential raw material of land-based agriculture. The physiological and chemical properties of productive soils are neither universal nor replicable. Despite all the modern advancements in agricultural production techniques, no one has devised a method of economically manufacturing food-producing soils. These reasons should be enough to answer the question, "Why save farmland?" But, of course, the question and its many answers are much more complex. Farmland protection also raises significant issues and debates that have little to do with the capacity to grow food; among them, landowner equity, the economics of farming, community growth and development, government farm programs and environmental concerns.

AGRICULTURE AND THE NEW YORK ECONOMY

New York is a farm state. Its 5.99 million acres of cropland and pasture support 38,000 farms producing a wide variety of food products and providing more than 90,000 jobs. The yearly gross cash income from agriculture routinely totals about \$3 billion. Cash receipts from farm commodities comprise 95 percent of the total.¹

The diversity and strength of the state's agricultural industry is illustrated by its national standing in many crops and products. New York ranks first in the production of corn for silage and creamed and low-fat cottage cheeses. It is second only to Washington State in apple output. Sweet and tart cherries, pears, grapes, cauliflower, celery, strawberries,

¹ *New York State Agricultural Statistics, 1991-1992*; New York Agricultural Statistics Service and New York State Department of Agriculture and Markets, in cooperation with U.S. Department of Agriculture National Agricultural Statistics Service, July 1992.

sweet corn, green peas and beans, fluid milk and total cheese production all rank within the top five nationally.

Agriculture is more than just farmland or farm families involved in the enterprise of farming. It is a network of farm-related business and support services dependent upon the activity of farming — or the products produced by farmers. This collection of businesses is the economic backbone of many rural communities throughout the state.

The relationship between farming and its companion industries in New York was fully explored in the 1985 study, *The Importance of Agriculture to Cayuga County*. This study found, for example, that 18 percent of the county's non-farm businesses were directly linked to the food and agriculture industry, with 82 percent of their annual sales attributable to agriculture. The study's survey of county businesses found that a minimum of \$648.76 million of economic activity was related directly to agriculture.²

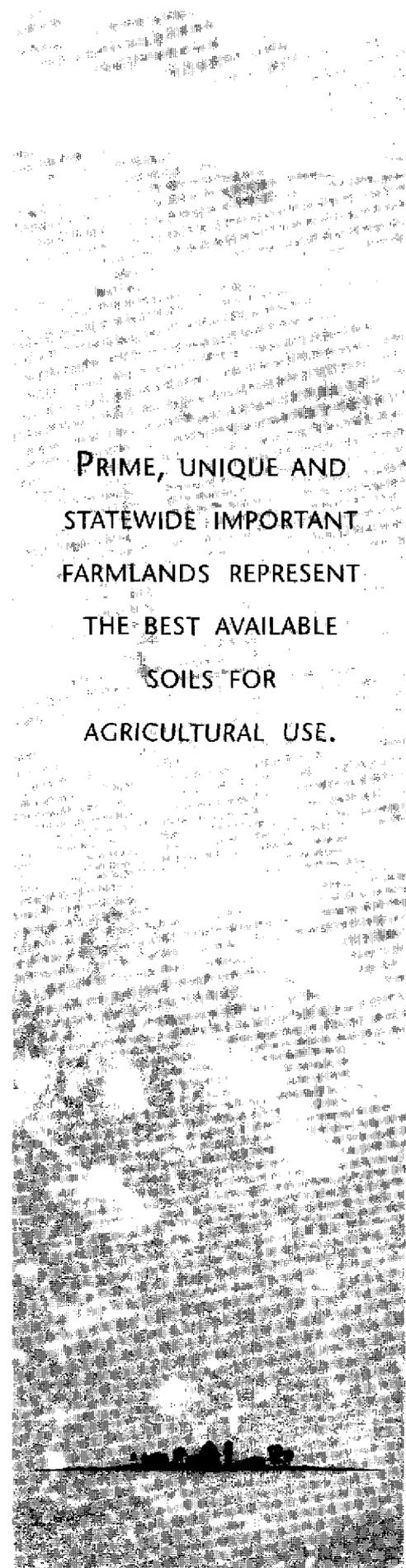
SOIL RESOURCES AND NEW YORK'S FARMLAND BASE

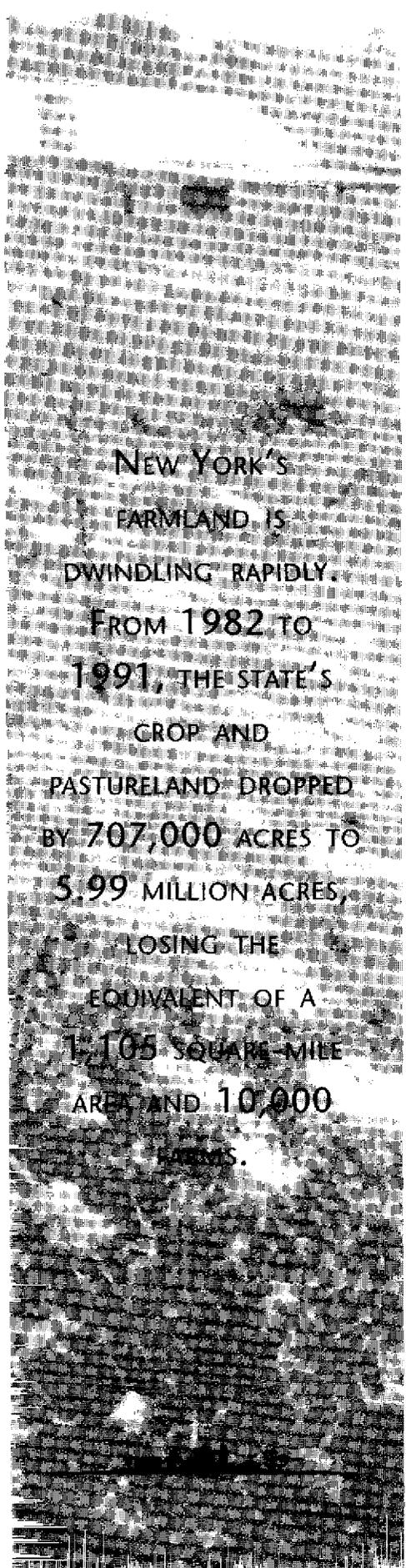
Prime, unique and statewide important farmlands represent the best available soils for agricultural use. These resources are limited, finite and irreplaceable. The natural flow of the use of these soils between agriculture and forestry is not a problem. However, the conversion of these soils to built-up uses is a permanent land use change. As the availability of these soils decreases, farmers are forced to choose between farming less productive and inefficient soils and the prospect of going out of business. Neither scenario is conducive to maintaining a healthy agricultural industry, as both result in higher economic and environmental costs to society.

The phrases prime, unique and statewide important farmland originate from USDA studies and are described as follows:

² *The Importance of Agriculture to Cayuga County*, N. Y. State Department of Agriculture and Markets, Division of Rural Affairs, in cooperation with the Cayuga County Planning Department, January 1985.

PRIME, UNIQUE AND
STATEWIDE IMPORTANT
FARMLANDS REPRESENT
THE BEST AVAILABLE
SOILS FOR
AGRICULTURAL USE.





Prime Farmland

Prime farmland is best suited to the production of row, forage and fiber crops. Due to inherent natural characteristics such as level topography, good drainage, adequate moisture supply, favorable soil depth and favorable soil texture, this land consistently produces the most food and fiber with the least fertilizer, labor and energy requirements. Prime soils tend to be resistant to erosion and run off. Thus, they support intensive cultivation with minimal adverse environmental impacts. The conversion of prime farmland to non-farm development increases pressure to farm less productive, ecologically fragile lands. These lands tend to degrade rapidly, erode easily and contribute excessively to water quality problems.

Unique Farmland

Unique farmland is not prime, but it has a special combination of soil quality, location, topography, growing season and moisture supply necessary to produce high yields of specialty crops such as fruits, grapes and vegetables. Since the characteristics that make land unique are geographically fixed, they cannot be reproduced once the land is converted to other uses. Therefore, it is extremely important to protect these lands.

Statewide Important Farmland

In addition to prime farmland, statewide important farmland is of particular state importance for the production of food, feed, fiber, forage and oilseed crops. Generally, these farmlands include those that are nearly prime and that produce high yields of crops when treated and managed according to modern farming methods. If conditions are favorable, some may produce as high yields as high as prime farmland.

The total land base available for agriculture in New York represents the raw material for this important industry. In 1991, New York had a total of 8.3 million acres of land in farms. While impressive, farmland is dwindling rapidly. From 1982 to 1991, the state's crop and pastureland dropped by 707,000 acres to 5.99 million acres, losing the equivalent of a 1,105 square-mile area and 10,000 farms.³

These trends cannot continue without having a severe effect on New York's farming industry and the state's economy. This is why the subject of farmland protection is so important today.

FARMING ON THE EDGE

As remarkable as the importance of agriculture is to New York's economy, it may seem surprising to discover that a sizeable share occurs on the edge of the state's major metropolitan centers. Indeed, 96 percent of its farming is in the shadow of cities: 58 percent in metropolitan statistical areas and 38 percent in adjacent counties.⁴

The proximity of agriculture to the urban edge presents both opportunities and challenges to New York farmers. On one hand, farmland close to urban population centers improves opportunities for direct retail sales of farm commodities and provides ready access to consumers. However, with urban edge locations comes intense development pressures from urban and suburban growth, increasing conflicts with non-farm neighbors, rising property taxes and a general increase in the costs of doing business.

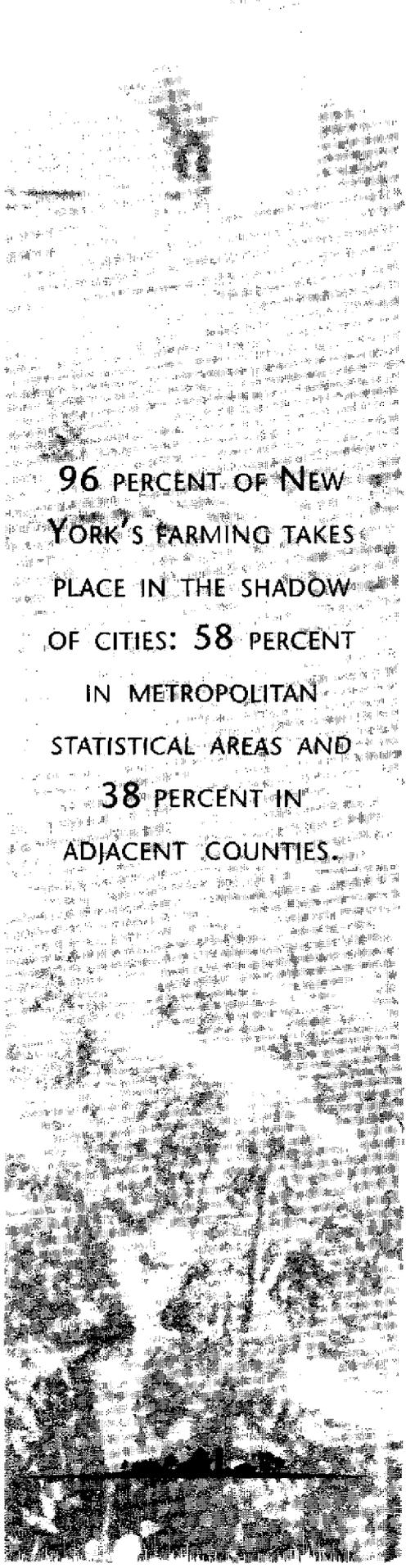
For some forms of agriculture, such as vegetable farms and fruit operations, farming close to the marketplace is an advantage. For the consumer, having a farmers' market or a roadside stand nearby increases the availability of fresh, high quality produce. Furthermore, farms in an urban environment provide a slice of open space in a busy, developed landscape. In addition to the economic contributions made by these farms, they offer educational opportunities to urban populations that otherwise would have little contact with farming and farm life.

FARMLAND AND COMMUNITY SERVICES

"Cows don't go to school" may seem to be an obvious statement of fact. But, it underscores the basic property tax savings made by farmland to local communities.

³ *New York Agricultural Statistics*.

⁴ The Bureau of Census, U.S. Department of Commerce, 1991, and U.S. Office of Management and Budget, 1992.



96 PERCENT OF NEW YORK'S FARMING TAKES PLACE IN THE SHADOW OF CITIES: 58 PERCENT IN METROPOLITAN STATISTICAL AREAS AND 38 PERCENT IN ADJACENT COUNTIES.

Farmland requires very little in community services such as fire and police protection, sewer and water lines and, of course, education.

AFT studies in New York and New England have found that an average of 65 cents of every local dollar of farmland property tax revenue can be used to offset the deficit created by residential demand on services. While the gross tax proceeds from farmland are small in comparison to other land uses, the relationship between tax revenues and the demand for public services makes a compelling case for encouraging the protection of farmland as a way to hold off spiraling increases in the demand for costly services and infrastructure.

Permanently protecting farmland and maintaining a viable farming sector can help communities control poorly planned growth and its associated costs. As a growth management strategy, protecting farmland offers a hedge against expensive urban sprawl and development while supporting an important contributor to the local economy.

FARMLAND AND THE QUALITY OF LIFE

Agriculture shapes both the spirit and the landscape of the place where it is found. Its open fields, scenic vistas and way of life help define the character of an area. These attributes, so synonymous with rural life, are unique to farming. Other land uses cannot replicate them. When farming begins to disappear, the physical and human personality of the area is altered forever.

The permanent replacement of farmland by development not only removes farming from the scene, but also eliminates open space, restricts wildlife habitat and transforms rural communities into their urban counterparts. As farmers move out of an area and their land is converted to other uses, the remaining farms are placed under additional pressures by non-farm neighbors unfamiliar with agriculture. Traffic and urban congestion increase, and necessary farm services are lost. These pressures can erode the confidence of the remaining farmers in the future of agriculture. This so-called "impermanence syndrome" is thought to lead to increased disinvestment that can take its toll on the rest of the farm community.

The new, non-farm residents often do not become aware of the decline of local agriculture until they realize that only the last farm in town remains. At this point, any action to maintain farmland and farming is too little, too late. Perhaps concerned citizens can save some open space or a historic property, but to be truly effective, farmland protection must be tied to protecting farming.

NEW YORK LEGISLATION

NEW YORK'S PRIMARY FARMLAND PROTECTION LEGISLATION IS THE AGRICULTURAL DISTRICTS LAW, WHICH ENCOMPASSES A BROAD RANGE OF TECHNIQUES, FROM USE-VALUE ASSESSMENT TO RIGHT-TO-FARM LEGISLATION. THIS SECTION ALSO COVERS THE NEWLY ENACTED 25-AAA, AGRICULTURAL AND FARMLAND PROTECTION PROGRAM AND OTHER TECHNIQUES AUTHORIZED BY EXISTING LEGISLATION.



NEW YORK STATE LEGISLATION

This section summarizes existing New York legislation that can be used to protect farmland. Some of these laws created the agricultural districts program, authorized the use of conservation easements and established farmland protection programs. To date, the state's primary farmland protection legislation has been the Agricultural Districts Law, so much of this section is devoted to it. The law itself encompasses a broad range of techniques, from use-value assessment to right-to-farm legislation. Recognizing that local land use decisions affect agriculture and farmland in the state, the agricultural districts law requires agricultural impact statements on public projects as well as agricultural data statements on local land use decisions.

This section also describes the newly enacted 25-AAA, Agricultural and Farmland Protection Program. According to 25-AAA, county agricultural and farmland protection boards will have the opportunity to develop plans to "sustain the state's valuable farm economy and the land base associated with it."

Other farmland protection techniques authorized by existing legislation are also identified and summarized in this section. Throughout, references are cited to relevant laws as well as to generic techniques that are covered in Section III. Application of these laws and techniques should result in a comprehensive strategy to support agriculture and farmland protection in the Empire State.

AGRICULTURAL DISTRICTS LAW

(AGRICULTURE AND MARKETS, ARTICLE 25AA)

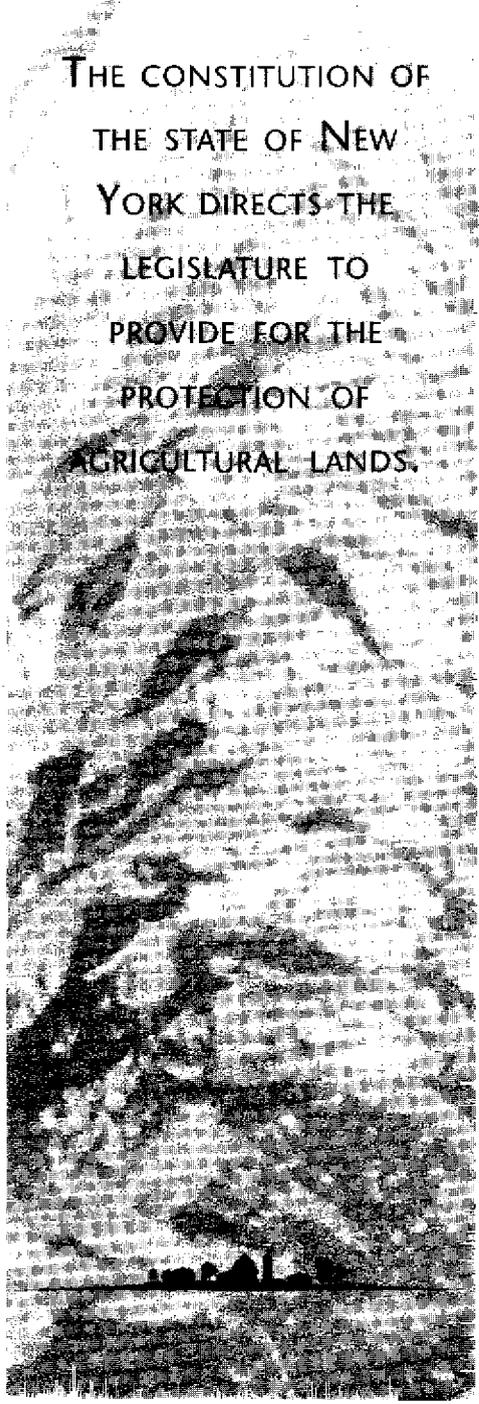
On Jan. 1, 1968, the New York State Commission on the Preservation of Agricultural Land submitted a report to Gov. Nelson Rockefeller. The report summarized the commission's investigations and made recommendations about protecting farmland. The commission noted the high productivity of New York's agricultural industry and the \$3.5 billion it contributed to the state's economy at that time. Recognizing that farming provides valuable open space to people and that agriculture is vulnerable to urban penetration, it concluded that many property owners were playing real estate roulette, where farmers bet on non-farm sales of their land rather than investing in their farm businesses, thus destroying farming in a given area. The commission concluded that "the problem of preserving agricultural land is a problem of preserving farming."⁵

As a direct result of the commission's recommendations, in 1971 New York enacted its Agricultural Districts Law, Article 25AA of the Agriculture and Markets Law. The law authorized the formation of districts to provide protection of farmland and farm businesses. It introduced the concept of use-value assessment to tax farmland owners on the value of their land for agricultural production rather than on its "full-market" value for non-farm development (see p.13-14). The new legislation also provided protection from unreasonable local regulation, as well as limits on: the exercise of eminent domain, the advancement of public funds on land within an agricultural district and the imposition of benefit assessments or special ad valorem levies on agricultural land within an agricultural district.

Over the years, the original Agricultural Districts Law has been amended several times. In 1992, it was significantly improved to enhance New York's farmland protection activities. These changes were encompassed in the Agricultural Protection Act, which Gov. Mario Cuomo signed into law in August of that year. The act included stronger notice of intent requirements, right-to-farm protection, disclosure requirements for real estate transfers, authorization of studies by the advisory council on agriculture on right-to-farm guidelines and property tax relief, and the creation of agricultural and farmland protection programs.

⁵ *Preserving Agricultural Land in New York State: A Report to Nelson A. Rockefeller, Governor of New York, from the Commission on the Preservation of Agricultural Land, January 1968, p. 11.*

THE CONSTITUTION OF
THE STATE OF NEW
YORK DIRECTS THE
LEGISLATURE TO
PROVIDE FOR THE
PROTECTION OF
AGRICULTURAL LANDS.



SUMMARY OF NEW YORK'S AGRICULTURAL DISTRICTS LAW

(AS AMENDED THROUGH AUGUST 1993)

LEGISLATIVE INTENT

The Agricultural Districts Law recognizes the importance of New York's farmland and calls for local participation and control as its guiding principles. Section 300 states, in part:

It is hereby found and declared that many of the agricultural lands in New York State are in jeopardy of being lost for any agricultural purposes. When non-agricultural development extends into farm areas, competition for limited land resources results. Ordinances inhibiting farming tend to follow, farm taxes rise, and hopes for speculative gains discourage investments in farm improvements, often leading to the idling or conversion of potentially productive agricultural land. ...

The constitution of the state of New York directs the Legislature to provide for the protection of agricultural lands. It is the purpose of this article to provide a locally-initiated mechanism for the protection and enhancement of New York state's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance.

SECTION 300

COUNTY AGRICULTURAL AND FARMLAND PROTECTION BOARD

Section 302 of the Agricultural Districts Law was amended by the Agricultural Protection Act. The former agricultural districting advisory committees were renamed and reconstituted as county agricultural and farmland protection boards. These boards, which may be established by the county legislative body, should have 11 members, including:

- At least four active farmers;
- A representative of agribusiness;
- A representative of an organization dedicated to agricultural land preservation, such as a local land trust;
- The chairperson of the county soil and water conservation district's board of directors;
- A member of the county legislative body;
- A county cooperative extension agent;
- The county planning director; and
- The county director of real property tax services.

The county agricultural and farmland protection boards are charged with advising the county legislative body about the proposed "establishment, modification, continuation or termination of any agricultural district." They also may review notice of intent (see p.17) filings and make recommendations about the effect of proposed actions involving public funds or public acquisitions of farmland in agricultural districts. The boards will also develop and approve county agricultural and farmland protection plans.

The county boards may request the commissioner of agriculture and markets to review any state agency rules and regulations they identify as affecting agricultural activities within an existing or proposed agricultural district. Boards may review agricultural land use classifications at the request of one or more farmland owners and recommend revisions based on local soil, land and climatic conditions.

THE FORMER
AGRICULTURAL
DISTRICTING ADVISORY
COMMITTEES WERE
RENAMED AND
RECONSTITUTED AS
COUNTY AGRICULTURAL
AND FARMLAND
PROTECTION BOARDS.

DISTRICT CREATION AND REVIEW

CREATION

When an owner or owners of farmland submit a proposal to create an agricultural district, the proposal is reviewed by the county agricultural and farmland protection board, the county planning board — where it is subject to public hearing and comment — and, finally, approved by the county legislative body. The law requires the following factors be considered:

- The viability of active farming within the proposed district and adjacent areas;
- The presence of viable farm lands that are not in active farming;
- The nature and extent of land uses other than active farming;
- County developmental patterns and needs.

Once adopted by the county legislative body, the proposed agricultural district must be certified by the commissioner of agriculture and markets.

REVIEW

Agricultural districts must be reviewed every eight, 12 or 20 years, depending on the initially determined review period. Upon review, the law requires that the county legislature consult with the county planning board and the agricultural and farmland protection board and consider the same factors in the creation of the district. In addition, the following findings are required:

- The extent to which the number of farms and farm acres furthers the purposes for which the district was originally created;
- The extent to which the district has achieved its original objective;
- The degree to which the district is consistent with community economic and land use conditions; and
- The district's effect on local government policies concerning community development, environmental protection and preservation of the agricultural community.

District creation and review anticipates a high degree of public participation. The public is given ample opportunity to comment about the relationship of the agricultural district, local land use decisions and the viability of the local farm economy.

UNIQUE AND IRREPLACEABLE LAND

In addition to locally initiated agricultural districts, the commissioner of agriculture and markets may create agricultural districts comprised of predominantly unique and irreplaceable lands.

AGRICULTURAL DISTRICT DATA COLLECTION

In 1992, Section 304-b was added to the Agricultural Districts Law to help the Department of Agriculture and Markets evaluate the environmental and economic effects of the agricultural districts program. It requires landowners to provide the counties with information about their property including:

- Total acres;
- Number of acres of cropland;
- Number of acres by land classification (if available);
- Principal products; and
- Approximate annual gross sales.

Counties are required to provide this information to the commissioner of agriculture and markets. The commissioner must submit a biennial report to the governor and the Legislature. The first report must be provided on Jan. 1, 1994. The commissioner is required to develop and maintain information on agricultural districts.⁶

AGRICULTURAL ASSESSMENTS

ELIGIBILITY

Owners of land used in agricultural production are eligible for agricultural assessment if they meet the minimum requirements set forth in

⁶ Financial information about farm enterprises received by the county or the commissioner is exempt from disclosure and may only be disclosed as aggregate statistical data.

THE PORTION OF THE
MARKET VALUE OF LAND
USED FOR
AGRICULTURAL
PRODUCTION THAT
REPRESENTS AN EXCESS
ABOVE THE
AGRICULTURAL
ASSESSMENT IS NOT
SUBJECT TO REAL
PROPERTY TAXATION.

Section 301. Land used in agricultural production is defined as: "not less than 10 acres of land used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more." The definition also includes rented land, land used in conjunction with a qualifying operation pursuant to a written rental agreement, support land, woodland up to 50 acres and land set aside in a federal conservation program. To be eligible, the land must either be in an agricultural district or subject to an individual commitment to use the land in agricultural production for eight years. The landowner must apply yearly to the local assessor. Agricultural assessments are calculated annually.

The commissioner of agriculture and markets is responsible for establishing and maintaining an agricultural land classification system based upon soil productivity and capability. Furthermore, the State Board of Equalization and Assessment annually is required to calculate an agricultural assessment based on soil productivity in conjunction with the land classification system.

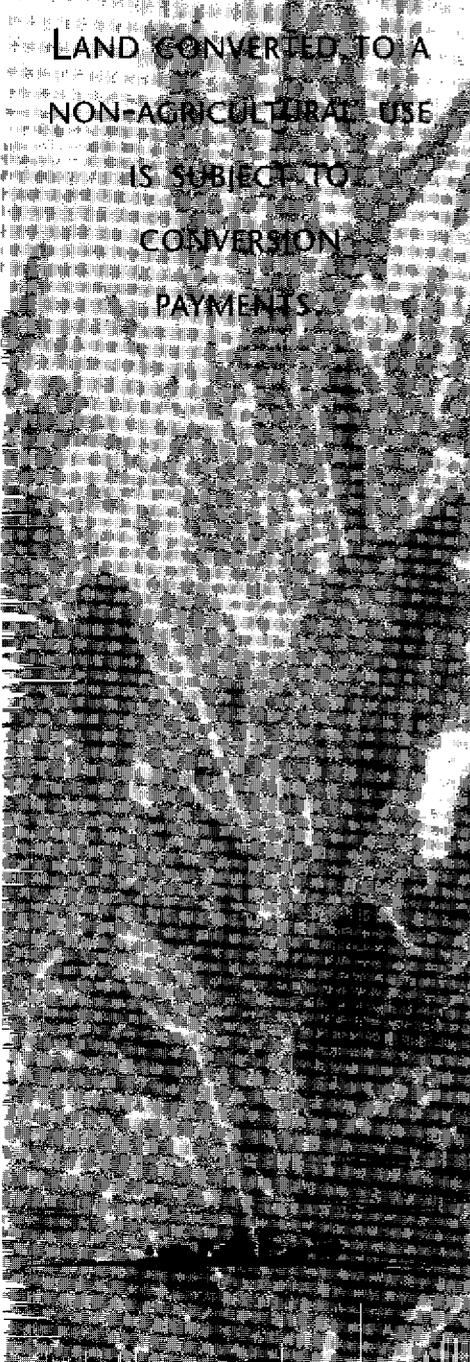
The portion of the market value of land used for agricultural production that represents an excess above the agricultural assessment is not subject to real property taxation.

CONVERSION PAYMENTS

Land converted to a non-agricultural use is subject to conversion payments. These payments equal five times the taxes saved in the last year in which the land benefited from an agricultural assessment, plus 6 percent interest compounded annually for each year in which the assessment was granted, not exceeding five years. If only part of a parcel is converted, the payment is based on the converted part of the parcel that received the agricultural assessment. Landowners must notify the assessor whenever this occurs. Failure to do so can result in penalties up to \$500.

LIMITATION ON LOCAL REGULATION

Section 305(2) states that: "No local government shall exercise any of its powers to enact local laws or ordinances within an agricultural district in a manner which would unreasonably restrict or regulate farm structures or farming practices in contravention of the purposes of the act unless



such restrictions or regulations bear a direct relationship to the public health or safety.”

If farmers wish to file formal requests for review by the Department of Agriculture and Markets, they must do so in writing and provide the location of the farm operation, a brief description of the affected farm operation, a brief description of the farm practices involved, a copy of the local law or ordinance at issue, the date it was enacted and a list of involved parties.

Some of the factors the department will consider include:

- Whether the farm is located within an agricultural district;
- Whether the agricultural district was established prior to the law in question;
- Whether the law actually regulates farm structures and practices; and
- Whether the local law is reasonable and whether the law has a direct relationship to public health or safety.

If the department cannot arrive at a mutually satisfactory solution with all parties, it is authorized to go to court to enforce this section.

POLICY OF STATE AGENCIES

Section 305(3) is intended to promote consistency in policy at the state level and is self-explanatory. It states that:

It shall be the policy of all state agencies to encourage the maintenance of viable farming in agricultural districts and their administrative regulations and procedures shall be modified to this end, insofar as is consistent with the promotion of public health and safety and with the provisions of any federal statutes, standards, criteria, rules, regulations, or policies, and any other requirements of federal agencies, including provisions applicable only to obtaining federal grants, loans, or other funding.

“NO LOCAL
GOVERNMENT SHALL...
ENACT LOCAL LAWS OR
ORDINANCES WITHIN
AN AGRICULTURAL
DISTRICT IN A MANNER
WHICH WOULD
UNREASONABLY
RESTRICT OR REGULATE
FARM STRUCTURES OR
FARMING PRACTICES ...
...SUCH
RESTRICTIONS OR
REGULATIONS BEAR A
DIRECT RELATIONSHIP
TO PUBLIC HEALTH
SECTION 305(3)

LIMITATION ON PUBLIC ACTIONS AFFECTING AGRICULTURAL DISTRICTS

This provision, commonly referred to as "Notice of Intent," recognizes that public projects can have a significant impact on the state's agricultural resources and that it is important to analyze the effect of proposed projects on agriculture and to avoid or minimize adverse farm impacts before public dollars are spent or land is acquired for those projects.

Section 305(4) states that:

Any agency of the state, any public benefit corporation or any local government which intends to acquire land or any interest therein, provided that the acquisition from any one actively operated farm within the district would be in excess of one acre or that the total acquisition within the district would be in excess of 10 acres, or which intends to advance a grant, loan, interest subsidy or other funds within a district for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities to serve non-farm structures, shall use all practicable means in undertaking such action to realize the policy and goals set forth in this article, and shall act and choose alternatives, which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse impacts on agriculture in order to sustain a viable farm enterprise or enterprises within the district. The adverse agricultural impacts to be minimized or avoided shall include impacts revealed in the notice of intent process described in this subdivision.

IT IS IMPORTANT TO
ANALYZE THE EFFECT OF
PROPOSED PROJECTS ON
AGRICULTURE AND TO
AVOID OR MINIMIZE
ADVERSE FARM IMPACTS
BEFORE PUBLIC DOLLARS
ARE SPENT OR LAND IS
ACQUIRED FOR THESE
PROJECTS

NOTICE OF INTENT

Preliminary Notice

The agency, corporation or government proposing an action subject to Section 305(4) must file a preliminary notice of intent with the commissioner of agriculture and markets and the county agricultural and farmland protection board. It must include a brief description of the *proposed action and its agricultural setting* as well as a summary of any anticipated adverse impacts on farm operations and agricultural resources within the district. This preliminary notice must be filed as early as possible in the development of a proposal and no later than the date of any determination about whether an environmental impact statement must be prepared under New York's State Environmental Quality Review Act.

Final Notice and Agricultural Impact Statement

At least 65 days before the proposed acquisition or advance of public funds, the agency, corporation or government must prepare a *final notice* of intent and file it with the commissioner of agriculture and the county agricultural protection board. The final notice must include a detailed agricultural impact statement setting forth short and long-term affects, any adverse agricultural effects, alternatives, irreversible and irretrievable commitments of agriculture resources involved, mitigation measures and aspects of the development that would encourage non-farm development.

Review of Notice

The county agricultural and farmland protection board may review the proposed action and report its findings and recommendations to the commissioner of agriculture and markets. After consulting with the commissioner of environmental conservation, the secretary of state and the advisory council on agriculture, the commissioner of agriculture and markets is required to make an initial determination of whether a proposed action would have an unreasonably adverse effect on the continuing viability of farm enterprises within the district. If this determination is made, the commissioner may conclude that a reasonable alternative exists and propose its acceptance. If the proposing entity rejects the alternative, it must set forth its reasons and a detailed comparison between the two proposals.



THE FINAL NOTICE OF
INTENT MUST INCEUDE
A DETAILED
AGRICULTURAL IMPACT
STATEMENT

The proposing entity must certify that it has complied with the requirements of this section at least 10 days in advance of undertaking the action. The commissioner may request the attorney general to bring a lawsuit to enforce any violations.⁷

Willing Seller Waiver

Landowners may waive their rights to protection under the notice of intent provisions if they sign a document indicating their intention and supply it to the commissioner.

LIMITATION ON IMPOSITION OF BENEFIT ASSESSMENTS OR SPECIAL AD VALOREM LEVIES

Section 305(5) protects farmland owners from paying for improvements such as water or sewer lines, lighting, non-farm drainage and solid waste facilities, based on the amount of frontage, acreage or value of their property, if those improvements are constructed after the agricultural district was formed. Local governments may also pass laws that base levies for fire and ambulance districts on a property's agricultural assessment.

COORDINATION OF LOCAL PLANNING AND LAND USE DECISION MAKING

Effective July 1, 1993, Section 305-a was added to the Agricultural Districts Law. This section requires local planning and land use decision making to recognize the policy and goals of the agricultural districts law and to avoid unreasonable restrictions or regulations on farm operations within agricultural districts. The agricultural data statement will require input from owners of farmland and evaluation and consideration of a proposal's possible impacts on agriculture before a local board makes a land use or planning decision.

⁷ Regulations governing the Notice of Intent process are contained in 1 NYCRR Part 371.

AGRICULTURAL DATA STATEMENT

When Required

Applications for special use permits, site plan approvals, use variances or subdivision approvals requiring municipal review and endorsement require an agricultural data statement if they occur "on a property within an agricultural district containing a farm operation or on property with boundaries within five hundred feet of a farm operation located in an agricultural district." In these cases, the reviewing board must evaluate the statement and review the possible impacts of the proposed project on the functioning of farm operations.

Contents

The agricultural data statement includes the name and address of the applicant, a description of the proposed project and its location, the names and addresses of landowners within the district who have farms and are located within 500 feet of the boundary of the proposed project property, and a map showing the project's site relative to the farm operations identified in the agricultural data statement.

Notice to Affected Landowners

The municipality must notify the owners of land identified in the agricultural data statement to allow farmland owners to comment on the effect of any proposed change on their farm operation. In addition, the municipality's review board is required to evaluate the possible impacts of the proposed project so that local land use decisions are not at cross-purposes with the policy and goals of the Agricultural Districts Law.⁸

This is probably the most important feature of the law because it requires local approving bodies to administer their relevant laws,

⁸ Town Law 283-a; Village Law 7-741: New sections have been added to the Town and Village Law that mirror Section 305-a. They require that notice be given to the county, regional or metropolitan planning agency about proposals requiring the agricultural data statements.

General Municipal Law 239-m and 239-n: The General Municipal Law has also been amended to reflect these changes and now requires review by county planning boards of proposals that might affect farm operations located in agricultural districts. The county planning board must conduct its review before the proposals are approved at the local level.

Environmental Conservation Law 8-0113: The Environmental Conservation Law has been amended to provide for explicit coordination with the agricultural districts program. The Department of Environmental Conservation has been directed to amend its regulations to ensure adequate consideration of the impacts of public acquisitions or advancement of public monies for non-farm development on agricultural lands in accordance with the notice of intent provisions in Section 305.

NOTICE TO AFFECTED
LANDOWNERS, REQUIRES
LOCAL APPROVING
BODIES TO ADMINISTER
THEIR RELEVANT LAWS,
REGULATIONS AND
ORDINANCES IN A WAY
THAT IS CONSISTENT
WITH THE POLICY AND
GOALS OF THE AGRICULTURAL
DISTRICTS LAW. THE
LAW REQUIRES THE
MUNICIPALITY TO ENACT
LOCAL ORDINANCES
AND HELPS

regulations and ordinances in a way that is consistent with the Agricultural Districts Law. This goes beyond the admonition in 305(2) to enact consistent local laws and helps assure that they apply them consistently, as well.

RIGHT-TO-FARM

Recognizing that non-farm neighbors sometimes object to the sights, sounds and smells of commercial agricultural practices, the 1992 Agricultural Protection Act added Section 308 to provide a defense to private nuisance lawsuits. Such provisions are commonly referred to as right-to-farm laws. These include procedures establishing guidelines for sound agricultural practices and require disclosure prior to the sale or transfer of property located in an agricultural district. (See p.40.)

SOUND AGRICULTURAL PRACTICES

Section 308 authorizes the commissioner to issue opinions about whether particular agricultural practices are "sound." The opinions must be provided to anyone who requests it on a case-by-case basis.

Sound agricultural practices refer to "those practices necessary for the on-farm production, preparation and marketing of agricultural commodities." Examples include: operation of farm equipment, proper use of agricultural chemicals, other crop protection methods and construction and use of farm structures. In evaluating these cases, the commissioner is expected to consult with appropriate state agencies, the New York State College of Agriculture and Life Sciences, the USDA Soil Conservation Service and any guidelines recommended by the advisory council on agriculture.

Guidelines will probably address four basic questions:

- Is the agricultural practice legal?
- Does the agricultural practice cause bodily harm or property damage?
- Does the agricultural practice perform the task or produce the intended result effectively and in an acceptable manner?
- Is the practice necessary in its present form or at all?

RECOGNIZING THAT
NON-FARM NEIGHBORS
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THE SIGHTS, SOUNDS
AND SMELLS OF
COMMERCIAL
AGRICULTURAL
PRACTICES, THE 1992
AGRICULTURAL
PROTECTION ACT
PROVIDED A DEFENSE
TO PRIVATE NUISANCE
LAWSUITS.
SUCH PROVISIONS ARE
COMMONLY REFERRED
TO AS RIGHT-TO-FARM

Defense to a Private Nuisance Action

On land located within an agricultural district or subject to an individual commitment, an agricultural practice shall not constitute a private nuisance if the commissioner has issued an opinion determining that the practice at issue is sound. The provision does not prohibit a person from recovering damages for personal injury or wrongful death.⁹

DISCLOSURE NOTICE

Section 310 requires landowners who sell or transfer property located in an agricultural district to provide a disclosure notice that states:

It is the policy of this state and this community to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products, and also for its natural and ecological value. This notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors.

Receipt of the disclosure statement must be recorded on a property transfer report prescribed by the State Board of Equalization and Assessment.

⁹ Private nuisance claims also may be affected by another right-to-farm provision located in the Public Health Law. Section 1300-c of the Public Health Law provides that farming activities shall not be considered a private nuisance if the agricultural activities:

- Were commenced prior to the surrounding activities;
- Have not increased substantially in magnitude or intensity; or
- Have not been determined to be the cause of conditions dangerous to life or health as determined by public health officials.

The effect of this provision on Section 308 is somewhat unclear. Section 308 has no language excluding agricultural activities that were not pre-existing or that have increased substantially in magnitude or intensity from a finding that a practice is "sound" in the commissioner's opinion. However, Section 308 also states that it applies "notwithstanding any other provisions of law." As a practical matter, the commissioner of agriculture and markets may consider some of the factors outlined in the Public Health Law before issuing an opinion about whether a particular practice is sound. The commissioner may consider them because the factors outlined in the Public Health Law reflect the fact that a practice may be sound in one situation but not in another.

SOUND AGRICULTURAL PRACTICES REFER TO "THOSE PRACTICES NECESSARY FOR THE ON-FARM PRODUCTION, PREPARATION AND MARKETING OF AGRICULTURAL COMMODITIES."

Local real estate agents and attorneys are the likely professionals responsible for advising property owners about this statement prior to sale or transfer. Timely notice is critical. For example, if the notice is not provided until just before closing, a prospective buyer might decide to back out of the deal at the last minute. Thus, early disclosure should protect sellers from last minute deal-breakers and avoid possible legal disputes about the disclosure obligation.

The disclosure provision is intended to educate and advise prospective property buyers about modern farming practices before they purchase property. It is hoped that this "ounce of prevention" will head off future farmer-neighbor conflicts.

ADVISORY COUNCIL ON AGRICULTURE

Section 309 outlines the duties of the advisory council on agriculture. The council is appointed by the governor with the Senate's advice and consent. The council's general duties and responsibilities include making comments and recommendations on: the agricultural districts program, the establishment of agricultural assessment values, and state government plans, policies and programs affecting farming and agriculture in the state.

The Agricultural Protection Act specifically charged the advisory council with studying right-to-farm issues and recommending guidelines for the commissioner of agriculture and markets to consult when issuing opinions on sound agricultural practices. The act also charged the council with studying programs that are intended to reduce the farmers' tax burden and to issue a report on its findings and recommendations to the governor and Legislature.

The 11-member council includes at least five commercial farmers and issues a written report to the governor and the Legislature each year.

THE DISCLOSURE
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TO EDUCATE AND
ADVISE PROSPECTIVE
PROPERTY BUYERS
ABOUT MODERN
FARMING PRACTICES
BEFORE THEY PURCHASE
PROPERTY. IT IS HOPED
THAT THIS "OUNCE OF
PREVENTION" WILL
HEAD OFF FUTURE
FARMER-NEIGHBOR
CONFLICTS.

AGRICULTURAL AND FARMLAND PROTECTION PROGRAMS

(AGRICULTURE AND MARKETS, ARTICLE 25AAA)

Article 25AAA was enacted as part of the Agricultural Protection Act of 1992 to explore ways to sustain the state's farm economy and to promote local initiatives for agricultural and farmland protection.

STATE PROGRAM

The commissioner of agriculture and markets must initiate and maintain a state agricultural and farmland protection program to provide financial and technical assistance to counties for local protection efforts.

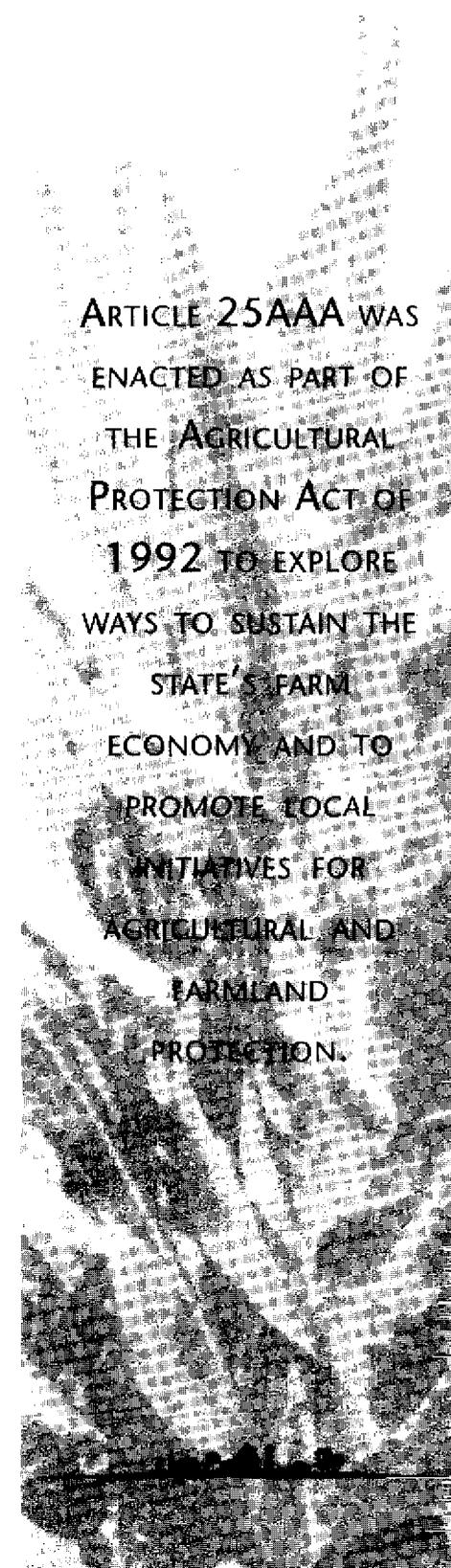
The commissioner's responsibilities include:

- Developing program guidelines;
- Providing technical assistance to local agricultural and farmland protection boards;
- Administering the Farmland Protection Trust Fund (see p.24);
- Administering planning grants to local boards;
- Disseminating information about the program; and
- Reporting to the governor and the Legislature about relevant activities.

COUNTY PLANS

County boards may develop plans in cooperation with the local soil and water conservation district and soil conservation service. These plans must include at a minimum:

- The location of any land or areas to be protected;
- An analysis of the land or areas proposed to be protected, specifically including the land's value to the agricultural economy of the county and open space value, consequences of possible conversion and the level of conversion pressure on those areas; and
- A description of the activities, programs and strategies intended to be used by the county to promote continued agricultural use.



ARTICLE 25AAA WAS ENACTED AS PART OF THE AGRICULTURAL PROTECTION ACT OF 1992 TO EXPLORE WAYS TO SUSTAIN THE STATE'S FARM ECONOMY AND TO PROMOTE LOCAL INITIATIVES FOR AGRICULTURAL AND FARMLAND PROTECTION.

The board must conduct at least one public hearing to obtain public input and then submit the plan to the county legislature for its approval. After the county has approved the plan, it must also be submitted to the commissioner of agriculture and markets for approval.

PLANNING GRANTS

Section 325 establishes a matching grant program to fund the costs of county agricultural protection planning activities. Grants are limited to \$50,000 and may not exceed 50 percent of the cost of preparing a plan. County boards are required to submit proposals to the commissioner of agriculture and markets for review and approval.

THE FARMLAND PROTECTION TRUST FUND

(STATE FINANCE LAW, SECTION 87)

Section 87 of the State Finance Law was amended in 1991 to establish a special fund known as the Farmland Protection Trust Fund. The fund is intended to constitute a state trust fund, as defined in the federal "Farms for the Future Act of 1990," Section 1465 of the Food, Agriculture, Conservation and Trade Act of 1990, thus making New York eligible for this program.¹⁰ Money from the fund will be allocated, with the approval of the commissioner of agriculture and markets, to municipalities that have established a local farmland protection program.

As of July 1993, no revenues had been raised for the trust fund. When revenues become available, the fund will be used for future federal and state appropriations for the purpose of farmland protection.

¹⁰ The Farms for the Future Act allows qualifying state programs to receive federal loan and interest cost assistance for the operation of programs that preserve or protect farmland for agricultural purposes.

MONEY FROM
FARMLAND
PROTECTION TRUST
FUND WILL BE
ALLOCATED, WITH THE
APPROVAL OF THE
COMMISSIONER OF
AGRICULTURE AND
MARKETS, TO
MUNICIPALITIES THAT
HAVE ESTABLISHED A
LOCAL FARMLAND
PROTECTION PROGRAM.

CONSERVATION EASEMENTS

(ENVIRONMENTAL CONSERVATION LAW, ARTICLE 49, TITLE 3)

Title 3 of Article 49 of the Environmental Conservation Law establishes a statutory conservation easement to "implement the state policy of conserving, preserving and protecting its environmental assets and natural and manmade resources, the preservation of open spaces, the preservation, development and improvement of agricultural and forest lands . . ."

The statute defines a conservation easement as "an easement, covenant, restriction or other interest in real property, created under and subject to the provisions of this title which limits or restricts development, management or use of such real property for the purpose of preserving or maintaining" its conservation attributes or characteristics. (See p.30.)

The law requires that a conservation easement be a written document signed and acknowledged by all parties. It must be held by a public body or nonprofit conservation organization. The easement must be filed with the county clerk's office and with the Department of Environmental Conservation.

The conservation easement statute eliminates many legal defenses once used by courts to deny enforcement of these types of easements.

ACQUISITION OF PROPERTY INTERESTS

(GENERAL MUNICIPAL LAW, SECTION 247)

Section 247 of the General Municipal Law provides local governments with explicit authority to acquire interests or rights in real property to preserve open spaces and areas, including farmland used in bona fide agricultural production. The statute permits a county, town or village to "acquire, by purchase, gift, grant, bequest, devise, lease or otherwise, the fee or any lesser interest, development right, easement, covenant, or other

A CONSERVATION
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AS "AN EASEMENT,
COVENANT,
RESTRICTION OR OTHER
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DEVELOPMENT,
MANAGEMENT OR USE
OF SUCH REAL
PROPERTY FOR THE
PURPOSE OF PRESERVING
OR MAINTAINING ITS
CONSERVATION
ATTRIBUTES OR
CHARACTERISTICS.

contractual right necessary to achieve the purposes of this chapter to land within the municipality.”

Section 247 provides the legal authority for municipalities to enact purchase or lease of development rights programs or otherwise acquire conservation easements in exchange for property tax relief. (See p.36.)

TRANSFER OF DEVELOPMENT RIGHTS

(TOWN LAW, SECTION 261-A, VILLAGE LAW, SECTION 7-703)

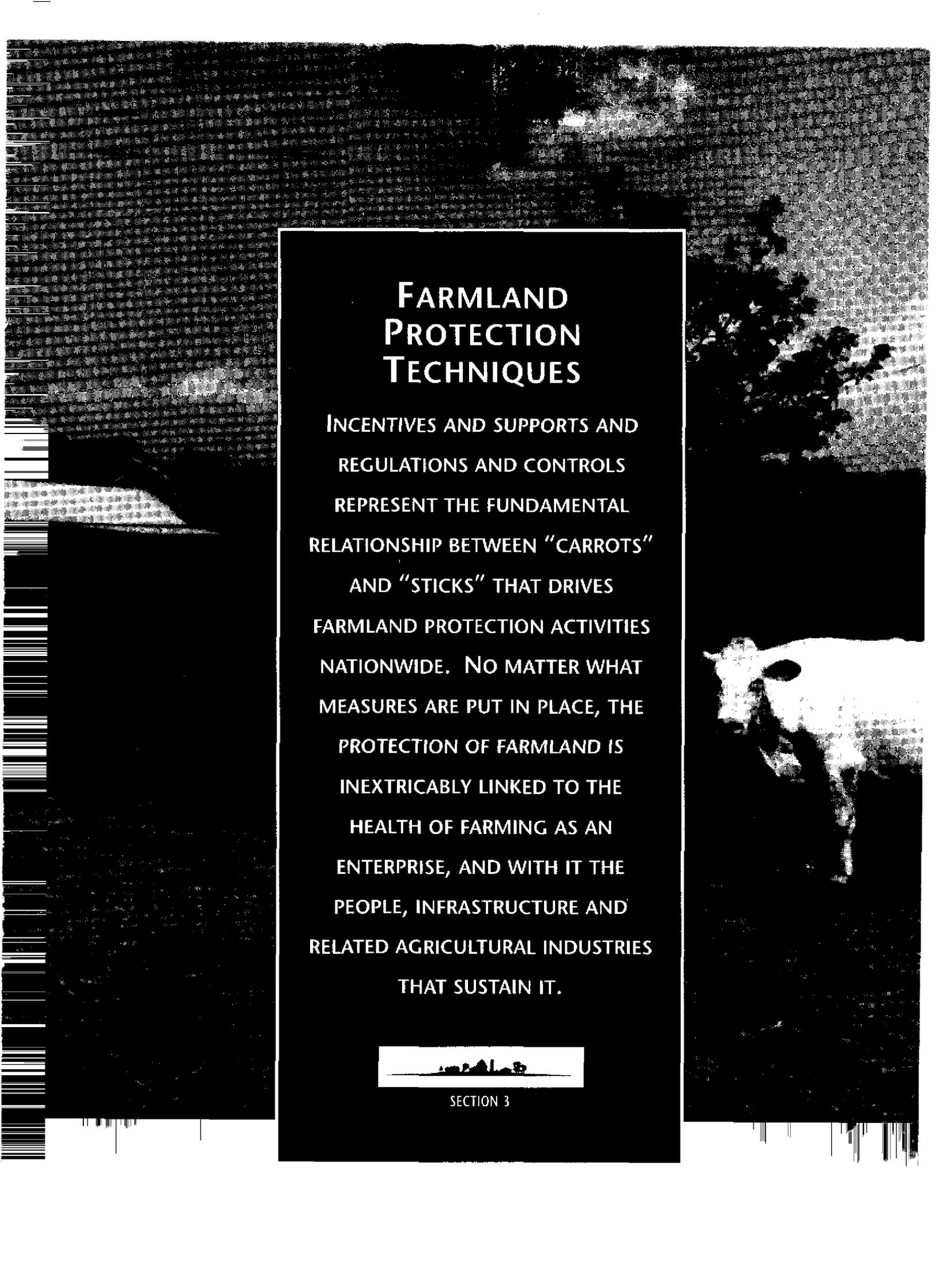
Section 261-a of the Town Law and section 7-703 of the Village Law explicitly empower municipalities to provide for transfer of development rights. Transfer of development rights are defined as “the process by which development rights are transferred from one lot, parcel or area of land in any sending district to another lot, parcel, or area of land in one or more receiving districts.” (See p.35.)

To implement a TDR program, receiving districts and sending districts are designated and mapped in accordance with a comprehensive plan. The statute states that the sending district may include agricultural land. It further states that receiving districts must have the necessary infrastructure and characteristics to support increased development.

Development rights are documented in the form of conservation easements and are enforceable by the town or other designated enforcing entity. They may be bought or sold by the municipality for deposit in a development rights bank. The municipality may establish the bank.

The TDR law is flexible so local governments may determine appropriate sending and receiving districts and decide how to acquire, transfer or bank development rights.

SECTION 247 OF THE
GENERAL MUNICIPAL
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OPEN SPACES AND
AREAS INCLUDING
FARM AND FOREST
LANDS IN
AGRICULTURAL
AND FOREST



FARMLAND PROTECTION TECHNIQUES

INCENTIVES AND SUPPORTS AND
REGULATIONS AND CONTROLS
REPRESENT THE FUNDAMENTAL
RELATIONSHIP BETWEEN "CARROTS"
AND "STICKS" THAT DRIVES
FARMLAND PROTECTION ACTIVITIES
NATIONWIDE. NO MATTER WHAT
MEASURES ARE PUT IN PLACE, THE
PROTECTION OF FARMLAND IS
INEXTRICABLY LINKED TO THE
HEALTH OF FARMING AS AN
ENTERPRISE, AND WITH IT THE
PEOPLE, INFRASTRUCTURE AND
RELATED AGRICULTURAL INDUSTRIES
THAT SUSTAIN IT.



SECTION 3

FARMLAND PROTECTION TECHNIQUES

This section gives an overview of the basic repertoire of farmland protection techniques in use around the country. Some complement federal initiatives, while others are more specific and may require state authorizing legislation. In turn, some are best implemented on a statewide basis and others may be administered locally.

The section is divided into two main parts: Incentives and Supports, and Regulations and Controls. They represent the fundamental relationship between “carrots” and “sticks” that drives farmland protection activities nationwide. However, the most effective protection comes from combining and balancing these techniques — being careful to ensure the long-term viability of farmland resources without jeopardizing the business of agriculture. No matter what measures are put in place, the protection of farmland is inextricably linked to the health of farming as an enterprise, and with it the people, infrastructure and related agricultural industries that sustain it. Thus, when reviewing these tools and considering a suitable mix, it is best to find ways to combine techniques into a long-term strategy that addresses agricultural enhancement as well as resource protection.

For example, while use-value assessment and other property tax incentives can be part of a comprehensive strategy to support agriculture and are included in this section, they are not really farmland protection techniques. Tax relief will only achieve resource conservation if it is combined with policies to strengthen farm profitability while specifically addressing farmland protection. This could occur through marketing programs, incentives such as agricultural districts or purchase of development rights programs, and comprehensive planning at the local level.

INCENTIVES FOR
FARMLAND PROTECTION
INCLUDE AGRICULTURAL
DISTRICTS,
CONSERVATION
EASEMENTS AND
DEVELOPMENT RIGHTS
PROGRAMS, PROPERTY
TAX RELIEF AND RIGHT-
TO-FARM LAWS.

INCENTIVES AND SUPPORTS

Many forces drive farmers out of business and take valuable farmland out of production. Lack of profitability is often incentive enough, but high offers from developers to buy farmland for development can be very persuasive even to farmers who routinely stay in the black. Therefore, a critical component of farmland protection efforts is to provide incentives and supports to encourage farmers to continue farming and to keep farmland affordable for future generations.

Incentives for farmland protection fall into a few major categories. The primary supports include agricultural districts, conservation easements and development rights programs, property tax relief and right-to-farm laws. They also include techniques to acquire land outright, either through public purchases or landowner donations.

This section covers the broad spectrum of techniques and refers back to specific New York legislation when appropriate.

AGRICULTURAL DISTRICTS

Agricultural districts are legally recognized geographic areas formed by one or more landowners and approved by one or more government agencies. They are voluntary and created for fixed, renewable time periods. Generally, they require landowners' written permission.¹¹ Programs assume if farms are protected from many of the threats to agricultural viability, farmers will continue to farm and to keep their land in production.

Agricultural district programs encourage farmers to enroll to receive special designation identifying farming as the primary activity. When landowners agree to place property in an agricultural district, they are granted specific protections from various farmland conversion pressures. Typical incentives include use-value assessment, right-to-farm laws, and protection from eminent domain, adjacent non-agricultural development and state agency regulations that interfere with farming. (See p.9.)

¹¹ New York does not.

AGRICULTURAL
DISTRICTS ARE LEGALLY
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FORMED BY ONE OR
MORE LANDOWNERS
AND APPROVED BY ONE
OR MORE GOVERNMENT
AGENCIES. THEY ARE
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RENEWABLE TIME
PERIODS.

Sometimes, other types of farmland protection programs are tied to agricultural districts. For example, in Pennsylvania, farms must be enrolled in an agricultural security area (or district) to qualify for the states' purchase of development rights program. (See p.32.)

CONSERVATION EASEMENTS

Conservation easements are legally recorded, voluntary agreements that limit land to specific uses. They are negotiated between willing landowners and qualified conservation or government organizations. Easements may be written to apply to entire properties or only to specific parts of the property. They may be permanent or put in place for a limited number of years. The latter arrangement is called a term easement.¹² Whatever their duration, conservation easements legally commit all future landowners for the specified time period. The organization that receives the easement accepts responsibility for monitoring and enforcing it. (See p. 25.) Land protected by conservation easements remains on the tax rolls and is privately owned and managed. Towns have the right to accept conservation easements or even to require them in a development plan.

Agricultural conservation easements are voluntary agreements specifically designed to protect farmland. They generally prohibit uses that damage agricultural value or productivity. Landowners can donate agricultural conservation easements or sell them, if there is an available program to buy them.

Conservation easements are flexible documents with terms tailored to suit the individual needs of landowners. An agricultural conservation easement usually will permit the construction of new farm buildings or a few carefully located houses for family members. Some easements allow limited development and subdivision of a few lots for non-farm sale or use.

The flexibility of other restrictions varies with farmland characteristics or conservation objectives. Many agricultural conservation easements require compliance with a current USDA Soil Conservation Service plan. If soils are highly erodible, an easement might limit damaging tillage practices or address water quality issues. If the property

¹² It is important to note that there are no income tax deductions for term easements.

has significant wildlife habitat, an easement could require future owners to farm and build around it. Easements may also address mining rights that would interfere with the agricultural productivity of the land, such as topsoil stripping or surface mining.

Conservation easements may be donated, sold, leased or transferred, depending upon state and local enabling legislation.

DONATING CONSERVATION EASEMENTS

While conservation easements limit specific development rights, they *do not affect other private property rights*. Landowners who donate agricultural conservation easements retain all rights to use their land for farming and other purposes that do not inhibit the ability to farm. They still hold title to their properties, they still may restrict public access, and they still may sell, give or transfer their property as they desire. Farmers also remain eligible for any state or federal farm program for which they qualified before entering into the conservation agreement.

When landowners donate conservation easements, they confer the economic value associated with developing their land. This can reduce federal and state income taxes, local property taxes and estate taxes. For example, if the easement qualifies under Internal Revenue Service rules,¹³ its value is deductible from gross income as a charitable contribution and also would reduce the gross taxable estate. The amount is determined by a *qualified appraiser* and is generally equivalent to the difference between *the land's value with and without easements*.

Most state tax laws mirror federal law and provide a charitable deduction for qualified easements.¹⁴ Some states direct local tax assessors to take into account the existence of conservation easement restrictions when assessing property.¹⁵ If the property is not already assessed at use value, this should result in lower property taxes.

¹³ IRC 170(h).

¹⁴ New York tax laws provide a charitable deduction for qualified easements.

¹⁵ New York does not. But General Municipal Law 247 requires that land, or interests in land, acquired by a municipality be valued as restricted. It states, "After acquisition of any such interest pursuant to this act, the valuation placed on such an open space or area for purposes of real estate shall take into account and be limited by the limitation of future use of the land."

IF THE EASEMENT
QUALIFIES UNDER IRS
RULES, ITS VALUE IS
DEDUCTIBLE FROM
GROSS INCOME AS A
CHARITABLE
CONTRIBUTION AND
ALSO WOULD REDUCE
THE GROSS TAXABLE
ESTATE.

Donating agricultural conservation easements benefits private landowners and serves public conservation efforts. For landowners, tax benefits may be the most tangible advantage, but they usually protect their land because they value the fact that it will be conserved and their families can continue to farm. For local governments, easements help maintain agricultural viability by ensuring that productive farmland will be available for future generations. Easements protect valuable farmland and allow private citizens to work together to protect the working landscape, wildlife habitat, natural resources and quality of life. Meanwhile, the land stays on the tax rolls supporting public services.

PURCHASING CONSERVATION EASEMENTS — OR DEVELOPMENT RIGHTS

Some state and county governments, as well as a few private organizations, have established programs to buy agricultural conservation easements. Most commonly called purchase of development rights programs, this land conservation technique helps communities protect prime and important farmland from conversion to non-agricultural use. When landowners sell conservation easements, or development rights, the agreement is recorded in the land records and limits the future use of the land to agriculture.

PDR was pioneered in Suffolk County, New York, in 1974.¹⁶ The county program bought easements on its first farm in 1977. Maryland and Massachusetts launched state programs that same year. Since then, other states, counties, towns and private nonprofit organizations have started programs nationwide. Programs commonly are found in areas where there is significant pressure to develop farmland for residential or commercial use. Already widespread in the Northeast, there are an increasing number of programs in other parts of the country.¹⁷

Although PDR programs may be structured differently, they have much in common. They are always voluntary, and participants retain full ownership and control of their land. Landowners can sell or transfer their property whenever and to whomever they please. But because of the

¹⁶ General Municipal Law 247 enabled Suffolk County to institute their PDR program.

¹⁷ To date, New York does not have a state PDR program.

easement, the land is permanently protected from non-farm development and remains available for agricultural use. Most programs allow landowners to buy back development rights if it can be shown that agriculture is no longer viable on the property. However, rigorous tests are applied to meet this determination. For instance, Massachusetts requires a 2/3 vote of both houses of the state Legislature to approve a release.

As with donated easements, the value of the development right is generally based on the difference between the land's value for non-farm development and its agricultural value. These values are determined by professional appraisers. However, some programs use set formulas to establish a fair price.

PDR programs are often funded by bonds. Other sources include general appropriations, real-estate transfer taxes, other special purpose taxes and matching funds from other agencies. Some states have authorized unique funding mechanisms. For example, Pennsylvania passed legislation to use a small percentage of its cigarette tax to fund its program.

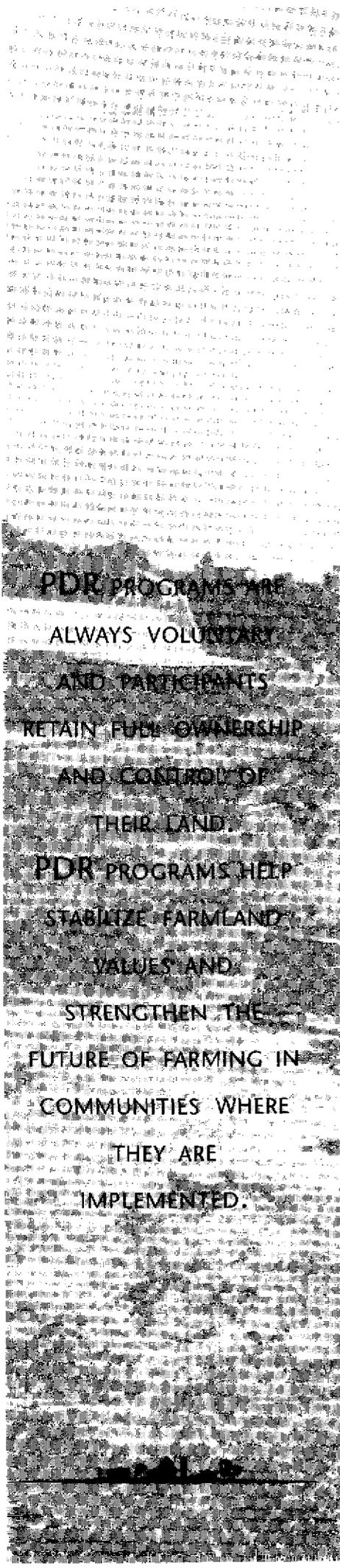
Landowners who want to sell development rights apply to programs in their own areas. Eligibility is based on a set of established criteria. These usually include:

- Soil quality;
- Agricultural viability;
- Jeopardy, or the extent of the threat of development;
- Proximity to other protected farms and a critical mass of farms and farm services; and
- Targeted areas of concern, such as agricultural districts.

PDR programs help stabilize farmland values and strengthen the future of farming in communities where they are implemented. Because the proceeds from the sale of development rights are usually spent close to home in capital improvements or to acquire additional farmland, these programs help support the local economy. Farmers also use the income from selling development rights to reduce debt load, establish funds for retirement or distribute to non-farm heirs.

In these ways, PDR programs sustain agriculture by supporting local businesses and related services that are vital to the farm economy. They

SOME STATE AND
COUNTY
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WELL AS A FEW
PRIVATE ORGANIZATIONS,
HAVE ESTABLISHED
PROGRAMS TO BUY
AGRICULTURAL
CONSERVATION
EASEMENTS. THESE ARE
COMMONLY CALLED
PURCHASE OF
DEVELOPMENT RIGHTS
PROGRAMS.



**PDR PROGRAMS ARE
ALWAYS VOLUNTARY
AND PARTICIPANTS
RETAIN FULL OWNERSHIP
AND CONTROL OF
THEIR LAND.
PDR PROGRAMS HELP
STABILIZE FARMLAND
VALUES AND
STRENGTHEN THE
FUTURE OF FARMING IN
COMMUNITIES WHERE
THEY ARE
IMPLEMENTED.**

also help communities avoid the high public costs associated with sprawl. Furthermore, the land remains on local property tax rolls. Thus, PDR programs can be seen as supporting the agricultural infrastructure and contributing to rural economic development as well as protecting farmland.

Although PDR has much to offer as a farmland protection technique, it is expensive. To be most effective, programs need permanent funding mechanisms to ensure longevity. These are hard to establish in fiscally tight times. However, PDR is one of the only techniques that ensures permanent protection. While it will never conserve all farmland or guarantee that the land will be continuously farmed, it can help build confidence in the future of agriculture by stabilizing land prices, keeping land affordable to farmers and available for agricultural use.

Overall, PDR is effective at mitigating rising property values from non-farm development pressure. Such programs represent a strong measure of public support for farming while protecting farmers' equity and giving them a solid alternative to selling land for development.

LEASING DEVELOPMENT RIGHTS

Development rights can be leased as well as purchased or transferred. However, leasing development rights has been used so rarely many of its potential applications are not known. In effect, LDRs are term easements where the lease is a legal restriction on the development rights drawn up for a specific length of time. The time period should be long enough to ensure a substantial commitment to agriculture — perhaps 20 to 30 years. The lease could be renewed automatically at the end of the term, or the agreement could stipulate review of the land's development value before the lease is renewed.

Lease payments could be calculated in a similar way as values are determined in PDR programs. They also could be based on the difference between the land's agricultural value and its full market value, with farmers receiving interest on the difference between them. Compensation for farmland owners could also be provided as a like-kind consideration such as additional tax relief in exchange for a term easement.

Financial risks are involved in any of these pay-as-you-go systems, both to the local government funding the program and to the farmers' who

must rely on an uncertain future cash flow. Thus, the length of the term and form of payments may be key issues for LDR or term easement programs.¹⁸

TRANSFERRING DEVELOPMENT RIGHTS

While development rights are purchased and retired under PDR programs, they are purchased and transferred for use in another location in transfer of development rights programs. TDR programs are intended to maintain designated areas in agricultural or open space use while compensating the owners of the protected land for the loss of their right to develop it for non-farm purposes. In effect, programs concentrate development in existing built-up areas while protecting farmland and compensating landowners. TDR programs involve the private sector as well as government and can be tailored to achieve specific community land protection and development goals. (See p.26.)

TDR is very dependent upon local planning and political processes and relies on a dynamic private market to take advantage of the higher development densities the technique creates. Establishing a program's structure requires far-reaching master plan and zoning ordinance revisions. Typically, TDR programs establish protection — or sending — areas, and development — or receiving — areas. Credits are usually employed that can be transferred to apportion development rights fairly. Formulas are set for the number of development rights available for sale and how to apply them.

When programs are set up, transfers take place on the open market with oversight by local government. Landowners in the sending area are assigned development rights but are not allowed to develop their property. Instead, they may sell these rights to developers or landowners in the receiving area who may use them to build at higher densities than allowed under existing zoning laws. As in PDR, when development rights are sold, the easement is legally recorded and becomes part of the chain of title to

WHILE DEVELOPMENT RIGHTS ARE PURCHASED AND RETIRED UNDER PDR PROGRAMS, THEY ARE PURCHASED AND TRANSFERRED FOR USE IN ANOTHER LOCATION IN TRANSFER OF DEVELOPMENT RIGHTS PROGRAMS... TRANSFERS TAKE PLACE ON THE OPEN MARKET WITH OVERSIGHT BY LOCAL GOVERNMENT.

18 Southampton, N.Y. set up a Term Easement Program in the 1980s to reduce property taxes on land protected for five years or more. The longer the time commitment, the greater the tax reduction.

the property. In addition, the protected land stays in private hands and on local tax rolls.

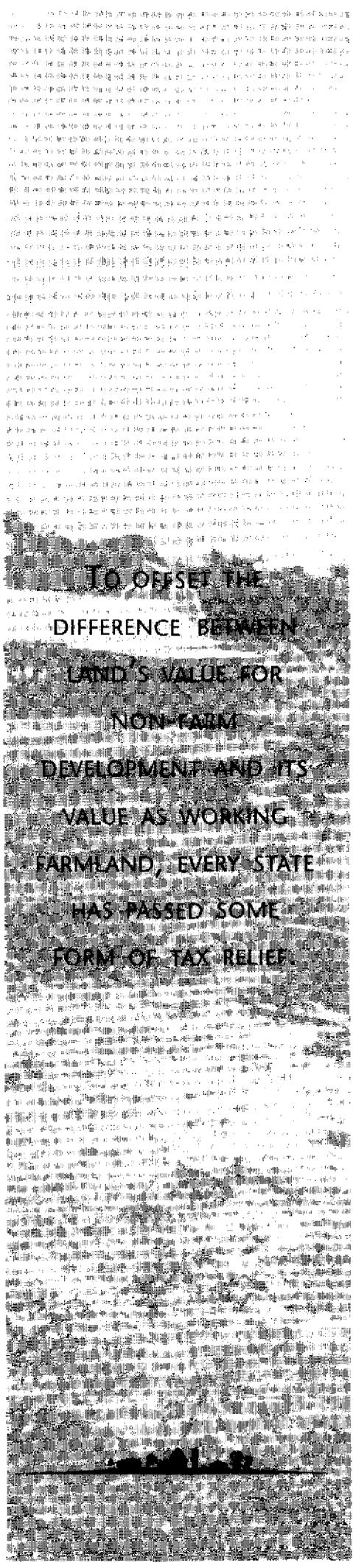
Some TDR programs are mandatory; others are voluntary. To date, voluntary programs have not been very effective, apparently because landowners in the receiving areas lacked sufficient incentive to get involved. Although this technique holds promise, its adoption has not been widespread because of the complexity of administration, the need for low-density zoning and the lack of enabling legislation in many areas.

PROPERTY TAX RELIEF

Land is one of agriculture's major production costs. The property taxes that come with land also represent a significant cost to farmers. The higher the land values in an area, the more substantial the competition for non-farm use. This dynamic discourages new farmers from buying land and can force existing farmers to sell. To offset the difference between land's value for non-farm development and its value as working farmland, every state has passed some form of tax relief.

Property and inheritance taxes are imposed on what is considered "full market value." This is usually defined as the price the property would sell for at its "highest and best use," often considered non-farm development. Undeveloped land, even working farmland and forestland, is the only category of real estate taxed on the basis of its potential use. Imagine taxing a mobile home on its potential value as a mansion! Since land's economic value for farm production tends to be lower than its value for non-farm construction, tax relief programs were designed to offset these differences.

Property tax relief programs fall into two basic categories: use-value assessment and circuit breaker tax credits. Use-value programs are a kind of differential assessment program that may typically include deferred taxation and restrictive agreements. Circuit breaker credits have not been as widely adopted as use-value assessment, but have been effective in states where they have been used. Local options include property tax abatements



in exchange for term easements of some kind. Finally, some tax relief laws apply specifically to relieving the burden of estate taxes.¹⁹

Farmers' savings from property tax relief programs can be significant and may even make the difference between staying in business or selling out. These programs serve farmers and society at large because they help correct the inherent inequities in the current property tax system. Because farmland provides more in property tax revenues than it requires in public services, keeping it in production also helps control the cost of community services. But as important as it is to the total farmland protection mix, tax relief itself is not a permanent solution. Since it tends to be a relatively short-term incentive, it does not ensure the long-term protection of farmland.

USE-VALUE ASSESSMENT

Use-value assessment programs tax eligible farmland at its agricultural or current use value instead of at its potential value for development. Eligibility usually includes minimum acreage and gross sales requirements.²⁰ Many programs provide guidance to local assessors on valuations sometimes based on the value of the commodities produced or the type of farmland use. Most states require the land to be actively farmed during the current tax year, and many require it to have been farmed for two to three previous years.²¹

Many states have adopted deferred taxation as the form of their use-value programs. It requires program participants to pay some or all of the taxes that were excused if they convert land to ineligible uses. Some of the rollback penalties are steep, although many just assess the difference between taxes actually paid and taxes that would have been paid if the land had not been enrolled in the program. A few states have restrictive

19 Special use valuation is a federal program available to farmers to reduce inheritance taxes on working farmland. Estate taxes are levied based on a property's appraised fair market value at the time of death. This may be far greater than the land's value for agriculture, and many farm families are unable to pay these taxes and continue to farm commercially. Thus, heirs may be forced to sell the family farm to settle the estate, even if they want to continue farming.

Under IRC 2032A, farms owned and operated as a principal asset may be taxed at agricultural value instead of fair market value at the time of death.

20 In New York, the minimum is 10 acres and \$10,000. In addition, the land must be in an agricultural district, or the owner must agree to a commitment that keeps the land in agriculture for at least eight years.

21 In New York, the requirement is two years.

USE-ASSESSMENT

PROGRAMS TAX ELIGIBLE

FARMLAND AT ITS

AGRICULTURAL OR

CURRENT USE VALUE

INSTEAD OF AT ITS

POTENTIAL VALUE FOR

DEVELOPMENT.

agreement programs for farmland. In these cases, farmers must enter into enforceable contracts to receive use-value assessment and they must meet strict criteria to be released from the agreement.²²

LOCAL TAX-ABATEMENT PROGRAMS

Some communities have enacted local tax abatement programs in exchange for conservation easements. Generally, the programs provide a percentage reduction in property taxes as part of the agreement between the municipality and the landowner. Sometimes, they provide greater reductions in exchange for longer-term easements and specific agricultural conservation easements.²³

CIRCUIT BREAKER TAX CREDITS

Circuit breaker tax credits take a different approach to property tax relief than use-assessment programs. Circuit breakers allow eligible landowners to apply some or all of their property taxes on farmland or farm buildings to offset their state income tax. In this way, they relieve farmers from additional property taxes once these taxes exceed a set percentage of their income.

For example, if property taxes exceed a certain percentage of household income, farmers can credit this amount against their income tax liability. If the credit exceeds the tax, the difference is reimbursed as an overpayment.

Eligibility usually requires minimum gross acreage and sales. In Michigan, farmers must restrict their land to agricultural use by entering into a "farmland development rights agreement." Thus, land protected by agreement cannot be converted to non-agricultural uses for at least 10 years. In return, farmland owners become eligible for the circuit breaker tax credit.

22 For an excellent comparison of use-assessment programs from West Virginia to Maine, see *Use Value Assessment of Agricultural Land in the Northeast*; Bulletin 694; University of Vermont, Agricultural Experiment Station; Burlington, Vt.; 1987; pp 11 - 14.

23 The New York towns of Penfield, Perinton and Webster in Monroe County have enacted local tax abatement programs.

PURCHASE OR DONATION OF LAND

The most straightforward way for the public sector to protect land is to buy it outright; for private landowners, it is by donating their land to a conservation organization. Several techniques are available to facilitate these transactions. They include conservation sales, fee simple acquisition and outright donations, including reserved life estates.

CONSERVATION SALE

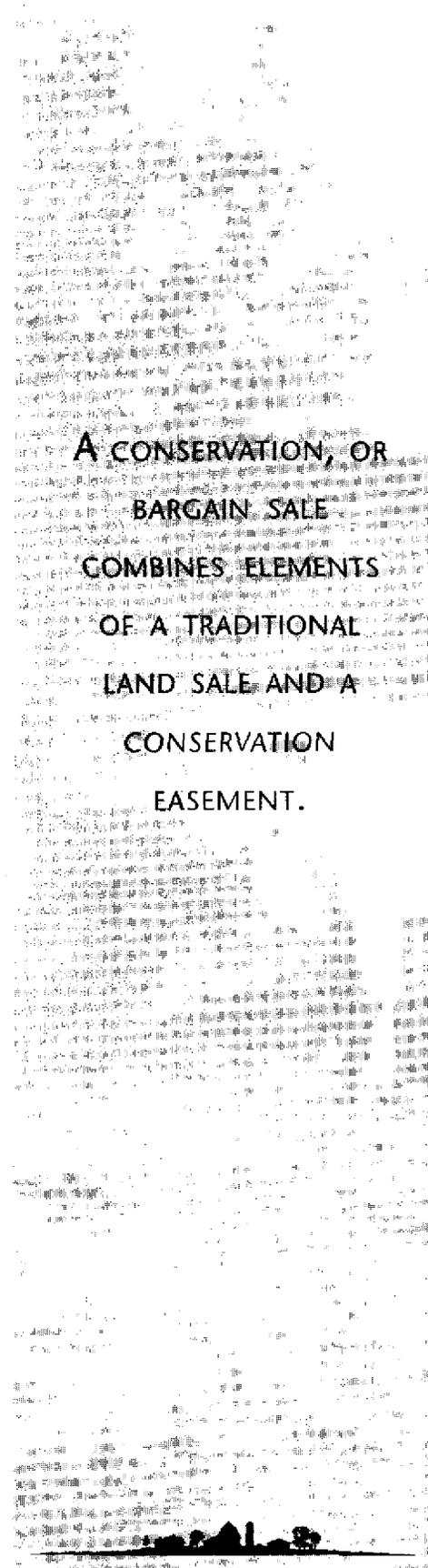
A conservation — or bargain — sale combines elements of a traditional land sale and a conservation easement. Using this technique, landowners may sell their farms at less than full market value to a *qualifying public agency or land conservation organization*. The difference between the full market price and the bargain sale price is considered a charitable gift for federal income tax purposes. The donation may result in tax benefits for the seller. Whoever buys the farm can limit future development by protecting the land with a conservation easement.

FEE SIMPLE ACQUISITION

One of the most direct ways for government and private conservation organizations to protect farmland is to buy it outright. Also called “fee simple acquisition,” local governments typically have used this technique to acquire land for public projects, such as parks, river corridors, water treatment plants or reservoirs. Although often applied on a voluntary basis,²⁴ governments may also use police power to purchase land through eminent domain.

Governments can buy entire fee interests in land and then sell them with easements in place. Or they can purchase farmland and lease it with restrictions on use. In direct farmland purchases, governments achieve the best results when they return the land to private ownership — preferably with easements attached.

²⁴ New York General Municipal Law 247.



OUTRIGHT DONATION

Landowners can donate their farms outright to a qualifying public agency or nonprofit land conservation organization. If landowners do not want to place a conservation easement on their property themselves, they can make this a stipulation in the donation. In effect, this technique amounts to a charitable gift. In exchange, landowners may receive reductions in federal taxes, including capital gains and estate taxes.

Donations of land for conservation purposes can be achieved in several ways. Some include immediate outright donation, a bequest through a will or a donation with a reserved life estate. With reserved life estates, landowners can plan the future of their property with a qualified conservation organization while retaining the right to use it for the rest of their lives. In this way, they can ensure permanent land protection, reduce income and estate taxes, and continue to work and live on their land.

RIGHT-TO-FARM LAWS

Many people move to agricultural communities because they enjoy the beauty of the working landscape. And while a rural community may be serene to some, to others agriculture is an industry that does not always conform to its pastoral image. As a result, normal agricultural practices and residential neighbors can come into conflict. As new residents move to farming areas, they often complain about early-morning noises or the application of agri-chemicals, not to mention the odors, slow-moving vehicles and other operations associated with commercial farm production. In turn, farmers may complain about theft and vandalism, or about young neighbors riding dirt bikes through their newly planted fields.

To protect agriculture from nuisance suits and local ordinances limiting farm activities, all 50 states have passed "right-to-farm" laws. Although the laws differ in specifics, they are all supposed to protect farmers and farm operations from nuisance liability. (See p.20.)

There are two types of nuisances: public and private. Right-to-farm laws can protect farmers and normal agricultural operations from either type of suit. Private nuisances affect property owners' individual land rights, and private nuisance laws protect landowners from other people

interfering with this right. Public nuisances involve actions that injure the public at large, such as industrial pollution. While right-to-farm laws are meant to protect against harassment and groundless lawsuits, they do not exempt farmers from environmental regulations or local health and safety laws.

Often, right-to-farm provisions are based on commonly held guidelines for sound agricultural practices. Typically, they respond to the following questions:

- Does the practice violate federal, state or local laws?
- Is the practice supported by experts in the field?
- Is the practice causing a public health problem or property damage?
- What is the relationship between the practice and production?
- Is there a reasonable alternative?

Although right-to-farm laws are not a panacea, they can play a role in preventing the conversion of farmland to urban uses. However, because the laws tend to be fairly general and have not been tested much in court, it is hard to tell how effective they will be in the long run. While appellate courts sometimes have sided with farmers when deciding nuisance suits, in many cases they have not.

Right-to-farm laws are most effective when the facts of the case fit the language and any specific provisions included in the law. The more general or vague the statutory language, the less likely it will be effective.²⁵

DISCLOSURE NOTICES

One way to strengthen right-to-farm laws is to notify neighbors about the law and the fact that they are buying or leasing a home next to a commercial farm. Typically, this is done in the deed in a contract of sale. This notification should state that neighbors may not complain about future as well as current normal agricultural practices. It should also require neighbors to sign a statement indicating they have read the notice and understand its implications. Furthermore, local governments can require disclosure notices as part of their zoning and subdivision approval processes.²⁶

²⁵ For a thorough discussion of the legal aspects of right-to-farm laws, see *A Livestock Producer's Legal Guide to Nuisance, Land Use Control and Environmental Law* by Neil D. Hamilton, Drake University Agricultural Law Center, Iowa, 1992. Specific case references can be found on pp. 41 - 61.

²⁶ New York law does allow local governments to require disclosure notices.

TO PROTECT
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REGULATIONS AND CONTROLS

Planning and zoning are important farmland protection tools at the local level. A comprehensive plan can include a commitment to local farming, supporting both agricultural resources and business opportunities.²⁷ Good zoning achieves the goals of a comprehensive plan.²⁸ Zoning ordinances, lot size requirements and specifications for roads and subdivisions have a tremendous effect on how a community develops or protects its farmland.

Many local planning boards and planning bylaws implicitly assume that farming is a residential land use. Thus, farmland often is zoned in rural/residential districts. Another common regulatory assumption is that farmland is an interim use, simply being held until it is replaced by urban or suburban development.

Ideally, planning and zoning promote land uses that best suit local social, economic and environmental qualities. If sustaining the agricultural economy and farmland protection are agreed-upon objectives, then this should be reflected in the planning and zoning process. Communities have many options available they can adapt to suit their own characteristics and needs. These are outlined in the following section.

AGRICULTURAL ZONING

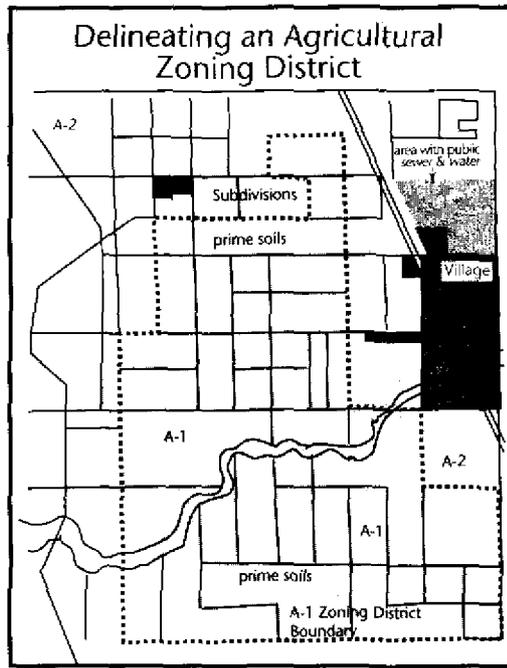
True agricultural zoning is a relatively new farmland protection tool. Although many rural areas have what they call agricultural zoning, the zones usually contain many other uses. Indeed, they almost always include non-farm residential uses at densities as low as an acre or less. True agricultural zoning protects farmland from any development that could prevent or hinder its future use for commercial agriculture.

Agricultural zones are often area-based. This means that ordinances designate how many non-farm dwellings are allowed on a certain-sized parcel. They generally require building on small lots instead of dividing

27 In New York, the law requires that zoning regulations "shall be made in accordance with a comprehensive plan." Town Law 263, Village Law 7-704.

28 Comprehensive plans should consider agricultural uses when appropriate. See Town Law 272-a, Village Law 7-722 (effective July 1, 1994).

TRUE AGRICULTURAL
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TO KEEPING THEIR LAND
IN PRODUCTION



the original tract into large, equally sized lots. Most are fixed area-based, for example, allowing one dwelling for every 25 acres. Others are sliding-scale area-based, or conditional, where the dwelling and acreage allowances are more flexible. A few limit the rate of development of the allowed units.

By its very nature, agricultural zoning will limit non-farm uses and the development potential of the land. For bona fide agricultural zoning to be effective, farming must be profitable in the area, and farmers must be committed to keeping their land in production. If these conditions are present and there is sufficient will and strong farm leadership, then agricultural zoning can be a compelling response to suburban forces that often pressure farmers off their land.

In general, strict agricultural zoning works best when combined with incentive programs. For example, the equity protection offered by PDR programs may convince farmers that agricultural zoning can be in their best interest when these two techniques are used together. In this way, PDR can serve as the carrot that helps mitigate the impact of zoning's regulatory stick.

CONDITIONAL-USE ZONING

Conditional-use zoning is fairly common and is considered a special land use permit approach. It provisionally allows non-farm uses based on

STRICT AGRICULTURAL ZONING WORKS BEST WHEN COMBINED WITH INCENTIVE PROGRAMS.

CONDITIONAL USE ZONING IS FAIRLY COMMON AND IS CONSIDERED A SPECIAL LAND USE PERMIT APPROACH. IT PROVISIONALLY ALLOWS NON-FARM USES BASED ON DISCRETIONARY STANDARDS.

discretionary standards. These uses may or may not be permitted by the zoning authority. Authorities typically base their decisions on whether the use is consistent with the purposes of the zone. Standards may include:

- Whether the use is compatible with surrounding uses;
- Whether the use adversely affects environmental areas; and
- How much the use would add to public service costs.

It is the conditional aspect of this technique that really sets it apart from other types of agricultural zoning where non-farm dwellings are generally permitted.

EXCLUSIVE AGRICULTURAL ZONING

Exclusive agricultural zoning establishes large minimum acreage requirements for non-farm rural residences and generally prohibits non-farm dwellings. It can severely restrict other non-farm uses although some special exceptions related to agriculture may be permitted.

Exclusive agricultural zoning can be a successful farmland-protection tool if it requires sufficiently large minimum lot sizes to support viable agricultural operations. Communities must determine their own minimum lots depending on the type of production in their areas. Typically these range from 25 to 160 acres. In fact, the Illinois courts upheld a 160-acre minimum lot size in an agricultural zone that was prepared to conform to a comprehensive county plan seeking to protect important farmlands.²⁹

SLIDING-SCALE ZONING

Sliding-scale zones work best in areas with a wide range of parcel sizes and when landowners participate in setting the dimensions of the scale. Further refinement can be achieved by establishing minimum and maximum building lot sizes. To keep productive farmland in agricultural use, maximum lot sizes (usually one or two acres) can be established, and non-farm development encouraged on less productive land.

The number of buildable lots allowed under this approach is set by a scale that weighs the total size of the parcel. Proportionally, owners of smaller parcels are allowed to split more land into lots than owners of larger parcels.

²⁹ Wilson vs. County of McHenry, 416 NE2d (1989).

EXCLUSIVE
AGRICULTURAL ZONING
ESTABLISHES LARGE
MINIMUM ACREAGE
REQUIREMENTS FOR
NON-FARM RURAL
RESIDENCES AND
GENERALLY PROHIBITS
NON-FARM DWELLINGS.

The following table indicates how the sliding scale approach can be used.

Sample Density Table

Maximum number of additional lots permitted:

Area of Parcel of Record	# Lots
1 to 10 acres	2 to 5
10.1 to 20 acres	3 to 6
20.1 to 40 acres	4 to 7
40.1 to 80 acres	5 to 8
80.1 to 160 acres	6 to 9
160.1 or more	7 to 10

The technique received a significant legal boost in 1985 when the Pennsylvania Supreme Court upheld a sliding-scale ordinance prohibiting more than three dwellings on a 43-acre farm parcel because of its farmable size and the fertility of its soils.³⁰ In a related Pennsylvania case, an appellate court concluded that “preservation of agricultural land is a legitimate zoning purpose and that the ordinance provisions are rationally related to that goal” and upheld minimum lot sizes greater than 10 acres.

EXISTING-USE ZONING

Existing-use zoning is a straightforward way to keep large open areas in their current use. Typical zoning can be fairly complex, regulating use, density, lot size and placing restrictions on structures and design. On the other hand, existing-use zoning does not set up stringent requirements. It simply allows the continuation of uses for which the land is already adapted. In this way, it is best suited to fairly rural areas where land uses are stable and the community supports continued agricultural use. In short, existing-use zoning helps communities maintain current land use patterns.³¹

30 *Boundary Drive Association vs. Shrewsbury Township*, 491 A.2d 86 (1985).

31 Jumbach, John A., “Law and a New Land Ethic,” *Minnesota Law Review*, Vol. 74:339; 1989, pp. 348-351.

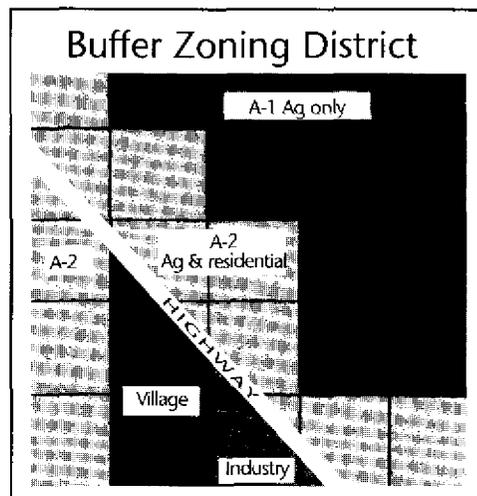
SLIDING-SCALE WORKS
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 BY ALLOWING THE
 CONTINUATION OF USES
 FOR WHICH THE LAND
 IS ALREADY ADAPTED,
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 COMMUNITIES
 MAINTAIN CURRENT
 LAND USE PATTERNS.

OTHER ZONING TECHNIQUES THAT MAY SUPPORT AGRICULTURE

BUFFER DISTRICTS

Buffer districts can offer country living opportunities while minimizing the tension between commercial agriculture and suburban land uses. They can help protect the long-term integrity of an agricultural district, particularly if exclusive agricultural zoning is in force. The number and placement of buffer districts varies according to the preferences and circumstances of individual communities. A simple buffer area could act as a transition between an exclusive agricultural zone and one that allows for more intensive development. For example, it could provide for single-family homes on specified lot sizes while still permitting continued agricultural production.

A SIMPLE BUFFER AREA
COULD ACT AS A
TRANSITION BETWEEN
AN EXCLUSIVE
AGRICULTURAL ZONE
AND ONE THAT ALLOWS
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DEVELOPMENT.



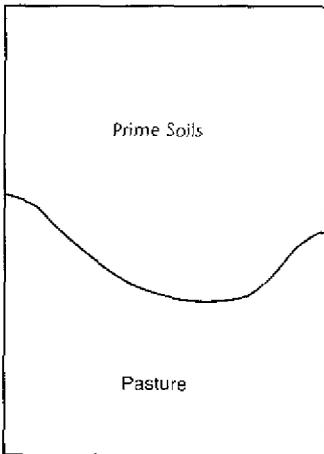
CLUSTER ZONING

Cluster³² or open space zoning is designed to protect open land while allowing new development. Its basic concept is to increase density on part of a parcel while leaving the rest of the parcel undeveloped. The total number of houses allowed remains the same, but the impact of the

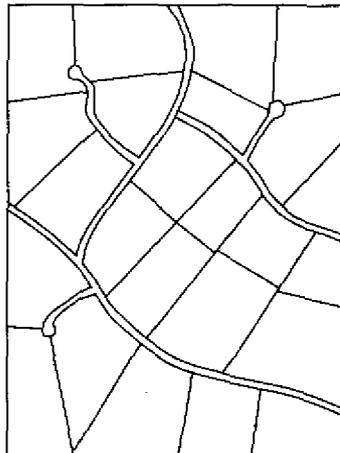
³² New York Town Law 281

development on natural resources is minimized. The costs of providing public services should also be reduced because the houses are closer together.

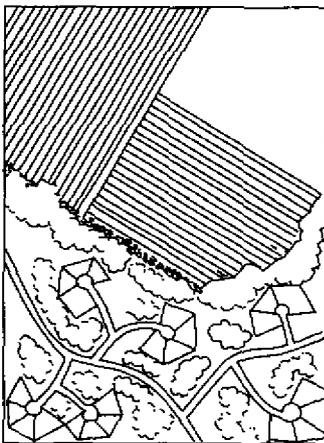
To date, while potentially protecting some open space, cluster zoning has not been widely applied to protect commercial farmland. Generally, underlying zoning densities are too high to protect much agricultural land. Furthermore, because zoning ordinances can change, development may be allowed on the open space portion of the property at a later date. One way to make sure the land is permanently protected would be to place a conservation easement on it. However, clustering can raise many tensions between residential and agricultural land uses. If clustering is to be used as a farmland protection technique, provisions also must be made to protect commercial farming or recognize that lower impact operations may be more appropriate in cluster situations.



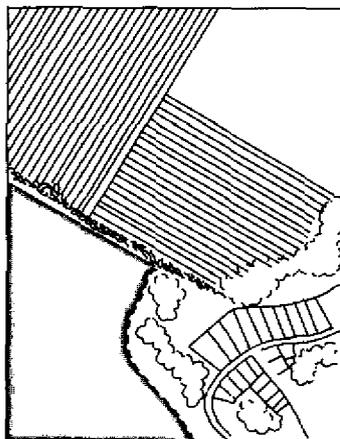
120 Acre Farm



Traditional Zoning



Cluster



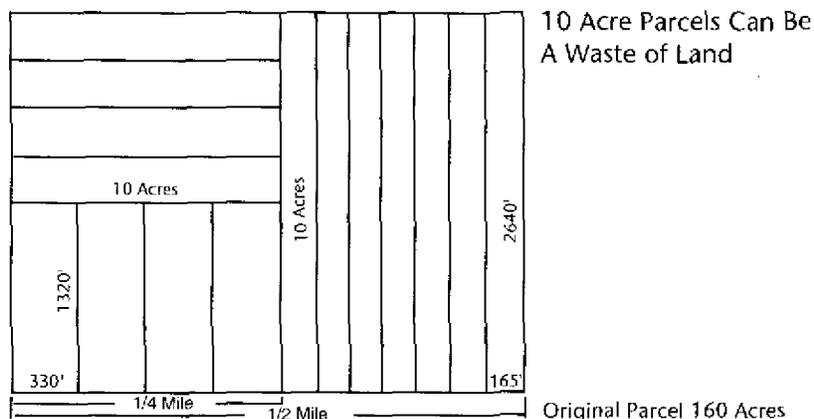
Traditional Hamlet Style Cluster Development

CLUSTER ZONING IS DESIGNED TO PROTECT OPEN LAND WHILE ALLOWING NEW DEVELOPMENT. ITS BASIC CONCEPT IS TO INCREASE DENSITY ON PART OF A PARCEL WHILE LEAVING THE REST OF THE PARCEL UNDEVELOPED.

LARGE-LOT ZONING

Large-lot zoning that designates minimum lot sizes as small as five to 10 acres generally is not considered a farmland protection technique. In fact, it may even encourage the premature conversion of farmland because it results in people purchasing more residential acreage than they want to buy or need to build a home in the zone. Large-lot zoning often is used in conjunction with long “permitted by right” use lists that treat agricultural zones merely as holding zones rather than as important commercial agricultural zones worthy of special protection from incompatible uses.³³

GENERALLY, LARGE LOT ZONING THAT DESIGNATES MINIMUM LOT SIZES AS SMALL AS 5 TO 10 ACRES IS NOT CONSIDERED A FARMLAND PROTECTION TECHNIQUE.



SUBDIVISION REGULATIONS

AGRICULTURAL PROTECTION OVERLAY DISTRICTS

Communities may use agricultural overlay districts to direct development away from the best farmland. Overlay districts place additional incentives and controls on land within the district to accomplish planning goals. The purpose of these districts is to minimize the impact of development on agriculture. While overlays soften the impact of development, they generally regulate how, not whether, farmland is developed. In these cases, they will not change underlying density requirements or limit non-farm uses.

³³ According to an unpublished 1991 article, “Reinventing Rural Zoning,” Joel Russell states that “large-lot zoning has done little or nothing to preserve the land because it has occurred in the conventional zoning context: uniform development of the entire landscape.”

Agricultural overlay districts can be used to trigger cluster-zoning provisions, buffer strips and other performance standards covered later in this section. However, this approach often avoids the more difficult question of whether non-farm development should be allowed in the first place.

BUFFER STRIPS

Areas experiencing rapid residential expansion onto agricultural lands may enact buffer strips to act as a physical barrier or to put distance between potentially conflicting land uses. Although farmers are protected from neighbors' complaints through right-to-farm laws (see p.40), buffers can help prevent friction before it occurs.

Buffers provide a physical distance or barrier between land uses and protect farmers from vandals and trespassers. Buffer strips can be enhanced with vegetation or from grading land to reduce the potential for clashes between commercial farmers and residential neighbors.

Generally, buffers are located at the edge of where a residential development abuts farmland. Communities can set their own limits on buffer strips to address: distance from homes, number of rows, spacing between rows, height and species of vegetation to use or other applicable conditions.

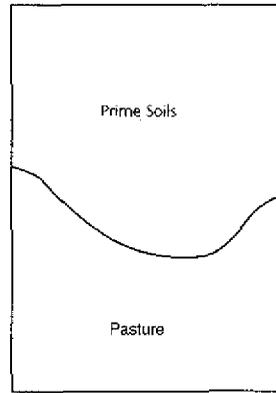
LIMITED DEVELOPMENT

Using limited — or conservation — development, landowners can finance the protection of their best farmland by developing a small portion of their property. Sometimes this technique is called creative development. If the conservation plan adheres to local ordinances, limited development effectively becomes a private approach to cluster zoning (see p.46). The technique helps balance farmland protection with the financial needs of the landowner.

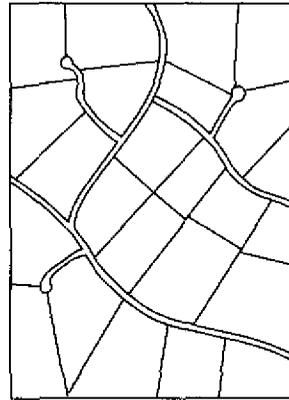
Many farms have some less-productive land with qualities that make it attractive for development. By setting aside a limited number of lots and locating them so they do not interfere with the farming operation, landowners can obtain much-needed cash while continuing to farm. A limited development may be combined with the donation or sale of

**AREAS EXPERIENCING
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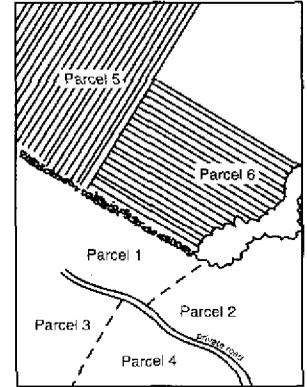
conservation easements on the remaining land. This technique requires flexibility in local planning and zoning ordinances to accommodate limited development.



120 Acre Farm



Traditional Zoning



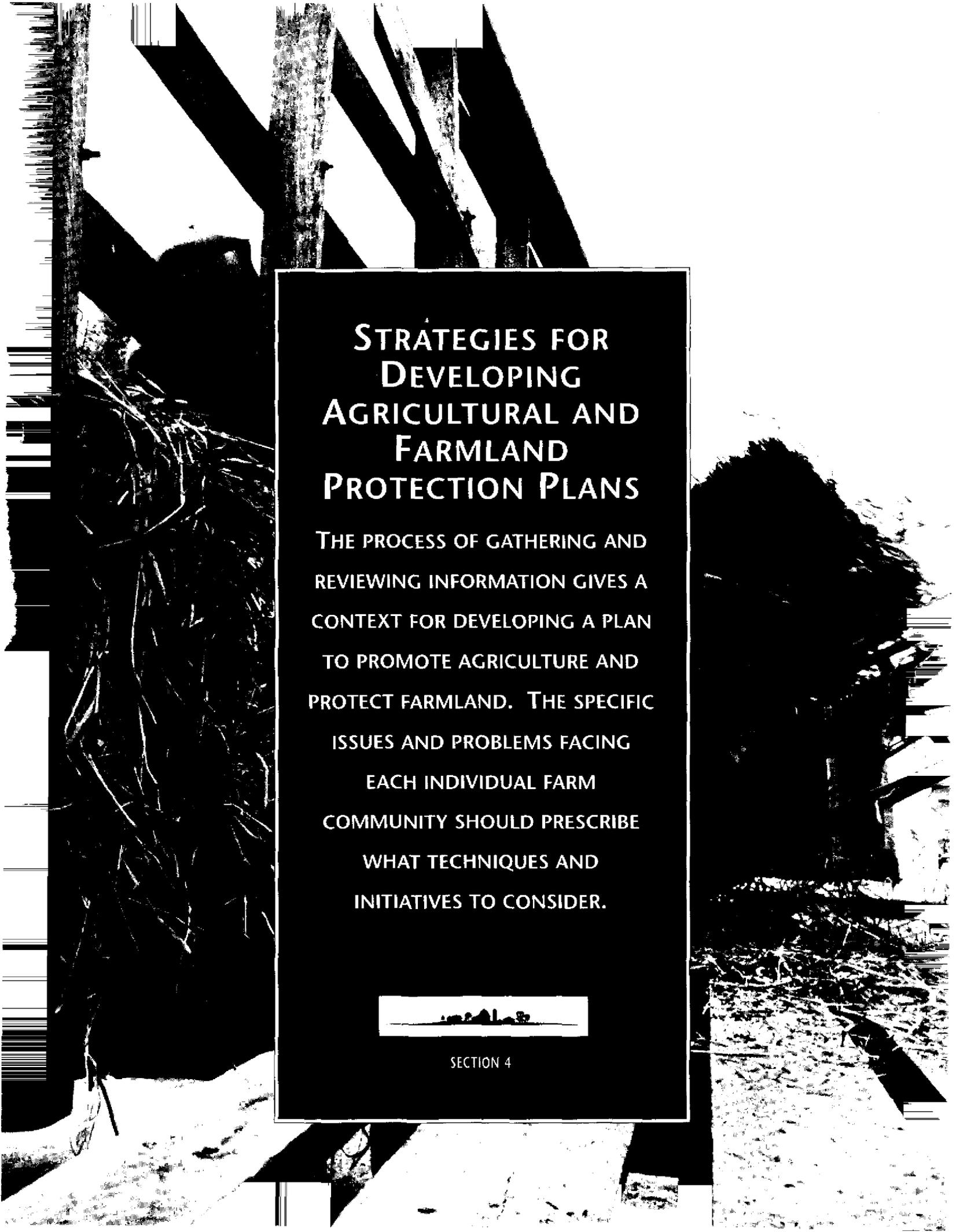
Limited Development

PERFORMANCE STANDARDS

Performance standards usually allow non-farm uses on a case-by-case basis, relying on specific measures to gauge the impact of the proposed land use on farmland. Often, agricultural overlay districts are used to trigger these standards.

Performance standards tend to be discretionary. They usually are designed for application on a single-lot basis, not for multiple dwellings or subdivisions. Specific non-farm uses may be allowed after an application has been considered relative to such factors as:

- Potential for conflict with agricultural use;
- Need to minimize the amount of agricultural soils converted to non-agricultural uses;
- The agricultural productivity of the land and soils involved; and
- Compatibility with existing or permitted uses on adjacent property.

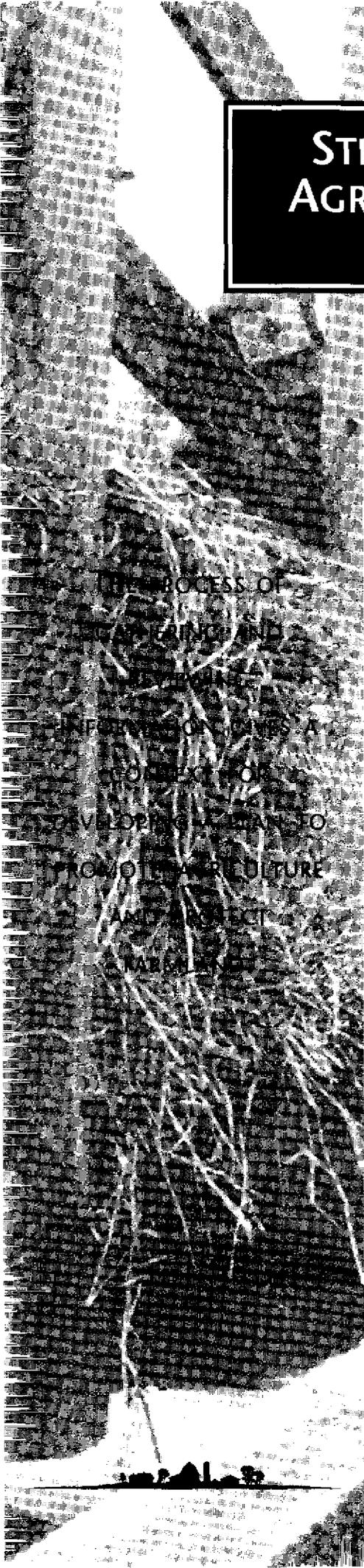


STRATEGIES FOR DEVELOPING AGRICULTURAL AND FARMLAND PROTECTION PLANS

THE PROCESS OF GATHERING AND
REVIEWING INFORMATION GIVES A
CONTEXT FOR DEVELOPING A PLAN
TO PROMOTE AGRICULTURE AND
PROTECT FARMLAND. THE SPECIFIC
ISSUES AND PROBLEMS FACING
EACH INDIVIDUAL FARM
COMMUNITY SHOULD PRESCRIBE
WHAT TECHNIQUES AND
INITIATIVES TO CONSIDER.



SECTION 4



STRATEGIES FOR DEVELOPING AGRICULTURAL AND FARMLAND PROTECTION PLANS

The Agricultural Protection Act of 1992 added Article 25-AAA to the Agriculture and Markets Law authorizing county Agricultural and Farmland Protection Boards to develop agricultural and farmland protection plans. Article 25-AAA directs the boards to identify any land or areas to be protected, to analyze the value of this land to the local economy as well as its potential for conversion to non-farm uses and the consequences of such conversion — and to propose activities, programs and strategies to promote the continued agricultural use of these lands or areas.

This section offers some thoughts, advice and suggestions on how to address this assignment. The information should offer county boards and other interested groups and individuals a basic framework for understanding the issues and charting a course for the development of an effective and comprehensive plan to protect farmland and support agriculture.

ASSESSING THE CURRENT SITUATION

In developing an Agricultural and Farmland Protection Plan, it is essential to document information about the existing farm community: its makeup, the issues it faces and its hopes for the future. Concurrently, an analysis of the non-farm community should be undertaken to ascertain the level of support for farmers and farming. The plan should then be designed to address these issues and circumstances.

At a minimum, the following information should be considered:

- Issues that concern farmers;
- Local problems that frustrate farmers or impede the growth of agriculture;
- The number, location and size of farms, as well as the types of farming operations;
- The presence and extent of agricultural services;

- A profile of farm operators: their age, expectations for the future and family plans with respect to agriculture;
- Non-farm development pressures in the area: population growth, housing starts, commercial or industrial construction or public infrastructure projects; and
- The attitude of the local non-farm population toward farmers and agriculture.

Much of this information is available from existing studies, reports and maps. For example, the location and size of farms may already be mapped in conjunction with existing agricultural districts. Information on population and growth can be found in U.S. and state census reports. However, primary research conducted by surveys and interviews can also provide valuable information unavailable through published sources. At a minimum, a formal survey of farm operators and owners is recommended. Surveying the general public should also be considered. Public meetings to release and review the results of this type of research can stimulate discussion of the issues and help generate consensus on what other steps should be taken.

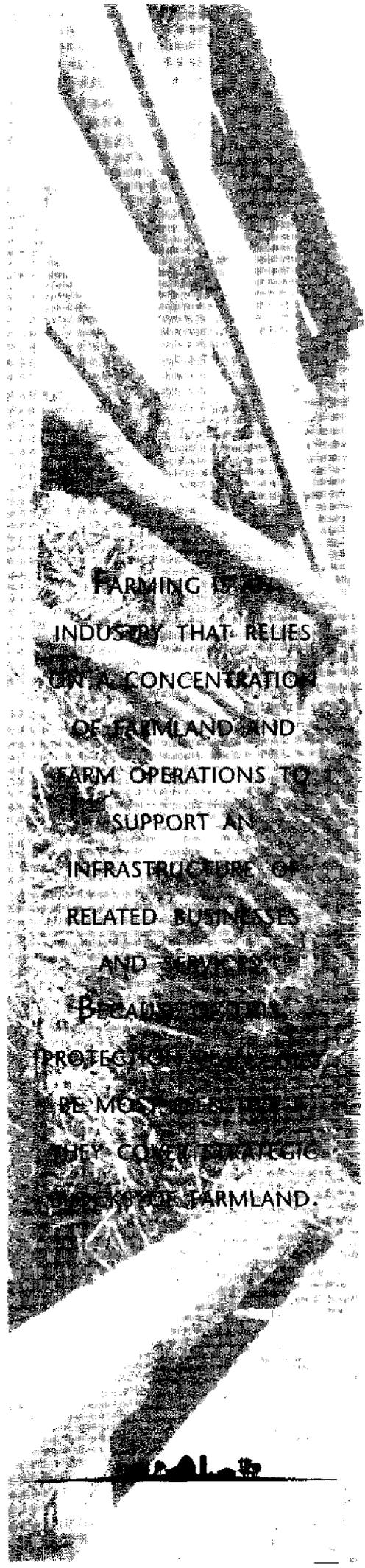
The process of gathering and reviewing information gives a context for developing a plan to promote agriculture and protect farmland. The specific issues and problems facing each individual community should prescribe what techniques and initiatives to consider. For example, finding alternatives to non-farm development involves a very different set of techniques than addressing the need for greater access to local markets. In all likelihood, plans will combine initiatives to address non-farm development pressures and economic issues.

SETTING THE COURSE

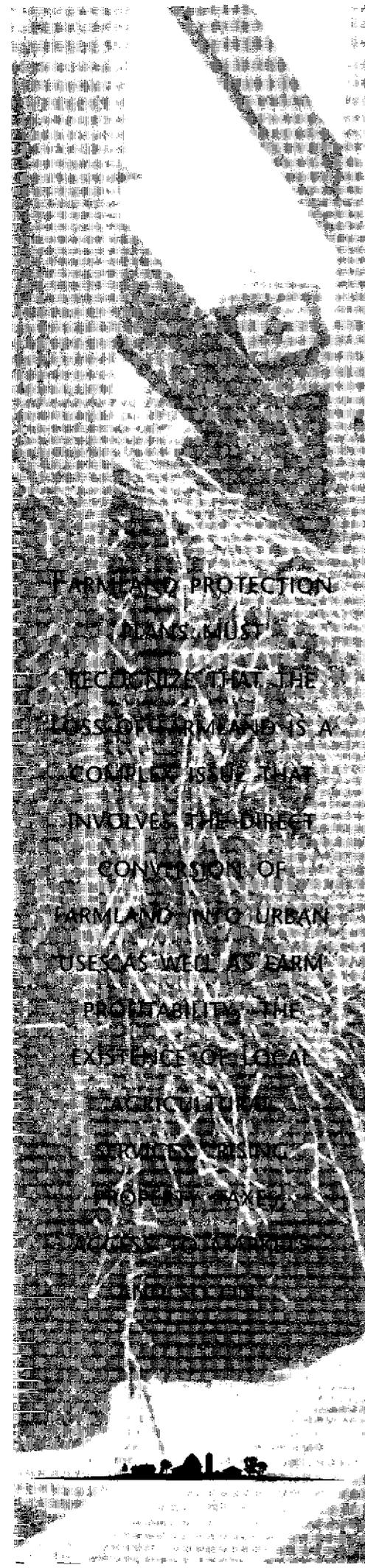
Once sufficient information is gathered, establish a framework for further efforts. Key elements of this framework include:

OBJECTIVES:

- What are the long range expectations of this process?
- What problems must be addressed?
- What is the target mix of future farming and non-farm development?



FARMING IS AN
INDUSTRY THAT RELIES
ON A CONCENTRATION
OF FARMLAND AND
FARM OPERATIONS TO
SUPPORT AN
INFRASTRUCTURE OF
RELATED BUSINESSES
AND SERVICES.
BECAUSE MODERN
PROTECTORS OF FARMLAND
ARE MOST EFFECTIVE
THEY COVER STRATEGIC
BLOCKS OF FARMLAND.



STRATEGY:

- What techniques should be examined?
- Is a comprehensive package of programs required?
- If so, what are the package's components?

FINANCING:

- What will implementation cost?
- Do funds currently exist?
- What are the fund-raising opportunities?

FOCUSING THE PROCESS

When the most critical problems facing the farm community have been identified, efforts should focus on issues that can actually be addressed through local initiatives. While local government cannot solve the problem of low milk prices to dairy farmers, it can establish a purchase of development rights or property tax relief program to support agriculture and protect farmland.

Identifying the farming and farmland resources that will be the subject of an agricultural and farmland protection plan is also important. Questions to ask include: What type of resources or operations will the plan concentrate on? Where are they located?

Farming is an industry that relies on a concentration of farmland and farm operations to support an infrastructure of related businesses and services. Because of this, protection plans may be most effective if they cover strategic blocks of farmland. Protecting large blocks of farmland can also insulate farming operations from non-farm neighbors and nuisance complaints, especially in places with a great deal of non-farm development.

Identifying the key farmland resources to address in a plan helps prioritize the actual farmland parcels and farms to be protected or affected by the plan. For example, this can provide the basis for a set of selection criteria to direct a purchase of development rights program to target the most strategic farms in an area.

When identifying priority farm resources, consider a number of physical features and agricultural attributes, such as:

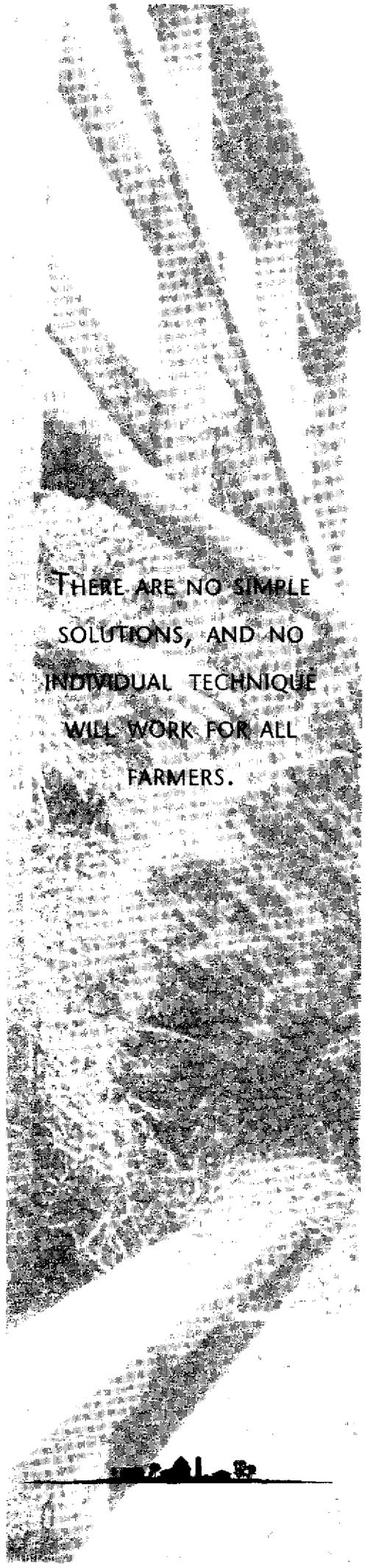
- Soils;
- Concentration of farm units;
- Location relative to rivers, surface water or drinking water wells;
- Flood plains;
- Proximity to existing developments and infrastructure improvements;
- Types of crops grown; and
- The next generation of farmers.

Establishing priorities depends on the issues and concerns facing the local farm community. For example, protecting a unique type of agriculture such as orchards or vineyards requires a very different set of priorities than protecting prime and statewide important soils. Existing agricultural districts may be a place to start, but boards may want to identify specific sub-regions of farms and farm resources within these agricultural districts as areas that may justify special protection.

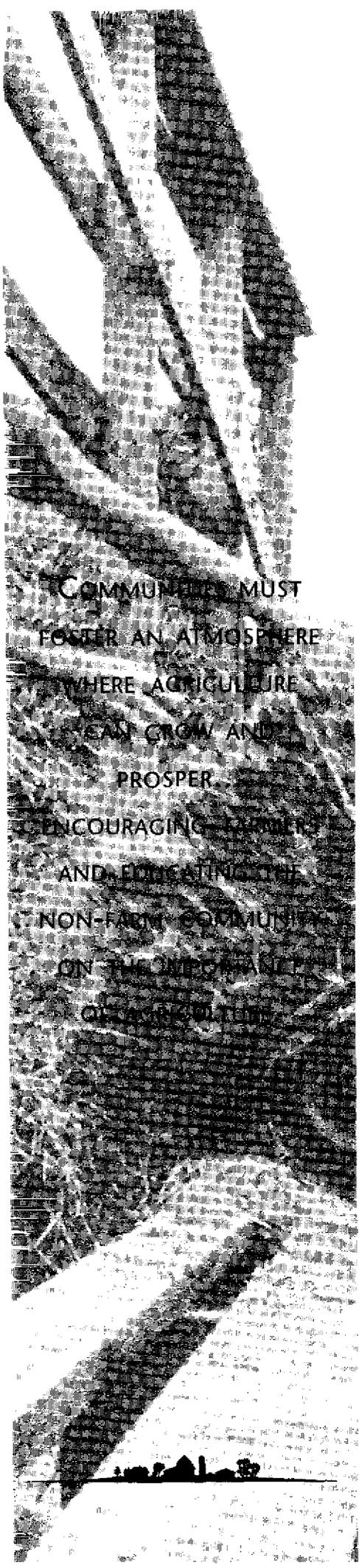
CREATING THE PLAN

Farmland protection plans must recognize that the loss of farmland is a complex issue that involves the direct conversion of farmland into urban uses as well as farm profitability, the existence of local agricultural services, rising property taxes, access to markets and so on. Therefore, the Agricultural and Farmland Protection Boards should develop a comprehensive plan that presents a range of approaches to the issues facing farmers and agriculture.

Since there is no miracle cure, farmland protection plans should offer a series of options. There are no simple solutions, and no individual technique will work for all farmers. No single technique can be expected to address all of these issues. Property tax relief programs, while providing a financial incentive to farmers, do not permanently protect farmland. Agricultural zoning, like all zoning, is an administrative program that can be modified as a result of local political changes. Purchase of development rights, while an effective and permanent alternative that protects equity, is a costly proposition that will be disappointing if expected to solve the problem on its own.



THERE ARE NO SIMPLE
SOLUTIONS, AND NO
INDIVIDUAL TECHNIQUE
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Financially and politically expensive programs should be coupled with least-cost approaches such as strong local right-to-farm language, buffer strips in new subdivisions, allowances for limited — more creative — developments and new homeowner notification procedures. For example, existing ordinances and regulations should be reviewed to remove unnecessary obstacles such as restrictions on retail farmstands and the renovation of farm buildings for employee housing.

Another important approach is to promote cooperation with conservation organizations and land trusts and to support their activities. Valuable private partners in land protection, these organizations enable farmers and landowners to donate conservation easements. Some provide advice and planning services for limited developments.

Finally, communities must foster an atmosphere where agriculture can grow and prosper. Local boards should encourage farmers and educate the non-farm community on the importance of agriculture. In short, communities must work together to foster a respect for farmers and farming. Only then will agricultural and farmland protection plans really accomplish their goals.

COMMUNITIES MUST
FOSTER AN ATMOSPHERE
WHERE AGRICULTURE
CAN GROW AND
PROSPER
ENCOURAGING FARMERS
AND EDUCATING THE
NON-FARM COMMUNITY
ON THE IMPORTANCE
OF AGRICULTURE

RESOURCES

The New York State Department of Agriculture and Markets is required to initiate and maintain a state agricultural and farmland protection program, including financial assistance to counties for their farmland protection efforts. For more information, contact:

New York State Department of Agriculture and Markets — Division of Agricultural Protection and Development Services; 1 Winners Circle; Capital Plaza; Albany, N.Y. 12235; 518-457-7076.

The following organizations and agencies may also be of valuable assistance:

American Farmland Trust — New York Field Office; 511 Broadway, Third Floor; Saratoga Springs, N.Y. 12866; 518-581-0078.

Cornell Cooperative Extension — Box 8, Kennedy Hall; Cornell University; Ithaca, N.Y. 14853-4203; 607-255-2237.

Land Trust Alliance — New York Office; P.O. Box 47; Stanfordville, N.Y. 12581; 914-868-1425.

New York Association of Conservation Districts, Inc. — Capital Plaza; 1 Winners Circle; Albany, N.Y. 12235; 518-457-7229.

New York Department of Environmental Conservation — Office of Natural Resources; 50 Wolfe Road; Room 604; Albany, N.Y. 12233-1012; 518-457-0975.

New York Farm Bureau — Route 9W; P.O. Box 992; Glenmont, N.Y. 12077-0992; 518-436-8495.

New York Planning Federation — 488 Broadway, Suite 313; Albany, N.Y. 12207; 518-432-4094.

USDA - Agricultural Stabilization and Conservation Service — James M. Hanley Federal Bldg.; Room 811; P.O. Box 7308; 100 S. Clinton Street; Syracuse, N.Y. 13261-7308; 315-423-5176.

USDA - Soil Conservation Service — James M. Hanley Federal Bldg.; Room 771; P.O. Box 7248; 100 S. Clinton Street; Syracuse, N.Y. 13261-7248; 315-423-5521.



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